

**A PHENOMENOLOGICAL ATTITUDE TO LAW,
STATE, AND LAÏCITÉ**

PRODUCTS OF HUMAN CONSCIOUSNESS

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CHAPTER ONE
THE PHENOMENOLOGICAL ATTITUDE
A Counter-cultural Approach

Can phenomenology present a reliable point of philosophical contemplation for 21st century Western *homo sapiens*? I asked myself this question, having been taught, throughout my academic formation, that classical philosophy amounts to a necessary interpretive intellectual tool for all Western philosophy. Within the modern era science enjoys acceptance as the preferred tool of intellectual interpretation according to some thinkers. This has caused me to wonder if science was but a different type of philosophy and not the knowledge of the physical world many presume it to be. Upon reflection, I eventually concluded that science was not a philosophy. Upon further thought, it appeared to me that metaphysical philosophers continue to preserve a classical philosophy for the interpretation in the 21st century and beyond. These individuals are engaging in an antiquated enterprise. These efforts within Western philosophy at preserving the classical version of knowledge, although rooted in experience, rely on an outdated philosophy. This is not to say the study of classical philosophy has no historical value within the contemporary philosophical context. Classical philosophy provides the foundations out of which phenomenology has evolved. However, I hold that many philosophers of today are questioning the Hellenistic epistemological foundations in light of the scientific and techno-

digital foundations of knowledge. In short, Western philosophical knowledge is entering a posthuman stage of evolutionary development by shedding its Hellenistic roots of Platonic idealism, that tell us nothing of what our future world could be like but only what our past world was like. The world of Platonic idealism will not be satisfactorily imported into the world of phenomenological consciousness. The task of phenomenological philosophers is to return to the interpretation of experience itself and seek to recast meaning not in terms of theoretical idealism, but in terms of existential meaning. Phenomenology, as posthuman philosophy, is *post* human in the chronological sense that it transcends the limitations of renaissance humanism and modern secular humanism by means of the evolution of human consciousness.¹ Instead of accepting the epistemology of a classical Western philosophy, whose meaning is inherent in its objectivity, phenomenological philosophers assign meaning within the existential situation in which the human being finds itself. The existential situation, not its assigned meaning, is what is inherited within contemporary human experience.

Phenomenological philosophers must deal with the perpetual existential anxiety and tension evident in human evolution. Such tensions and anxieties as disclosed are re-interpreted

¹ In this brief book I understand human consciousness through the (interpretive) principles of philosophy, not the (scientific) principles of psychology.

phenomenologically with the intent of avoiding the philosophical mistakes of the past given that the future is not yet accomplished in fact. From my perspective, phenomenological disclosures such as these signal the beginning of the process of dehellenization of classical philosophy, thus enabling a posthuman philosophy for the 21st century and beyond to be consciously constructed. Contemporary Western philosophical interpretation, of the posthuman or phenomenological sort, is not committed to any particular perspective. However, it has arisen out of a particular philosophy which has been dominant in the experience of the human community and its members, i.e., Hellenism. Phenomenological philosophy does not promote an ideology that exists independently of the philosopher's experience. Rather, phenomenological philosophy promotes an interpretation of experience that attempts to bring about an end to the perceived antithesis between classical humanism and the scientific humanism developing in the contemporary Western techno-digital culture. In this context, any new philosophical outcome will neither be classical, nor novel, but will be a reflection of a renewed interest in the current conscious understanding of Hellenic philosophy. Phenomenologists cannot escape their roots. In short: "The phenomenological method, then, is not the diametric opposite of the ontological; it is a more comprehensive one than the latter, whose merits it preserves and whose inadequacies it tries to remedy." ² This quote of Leslie

² *Evolution and Consciousness: The Role of Speech in the Origin and Development of Human Nature* (1989:31) University of Toronto Press. In

Dewart's is the umbrella principle under which I present my thoughts within this essay.

I intend the introductory chapter to cognition, causality and reality as an exposé of Leslie Dewart's creative thought upon which I base my phenomenological critique of Law, State and *Laïcité*. After recasting cognition, causality and reality I present in Chapter Two a phenomenological approach to the understanding of Law, State and *Laïcité*.

Classical philosophy has become so much part of Western common sense that it no longer plays a critical role in contemporary experience. I maintain that the purpose of philosophy is to re-fine common sense, to render it more suitable to contemporary experience and to any future experience beyond the 21st century. Therefore, philosophers cannot afford to become esoteric specialists, and should they become so it would be to their craft's peril. This is the contemporary purpose I envision in my philosophical quest. I understand philosophy as a non-esoteric enterprise in which philosophers observe and note all they can from their experience. That is, they engage in an existential philosophy, not a theoretical philosophy.

support of this perspective I draw the reader's attention to Zacharie Wasukundi and Rev. Dr. Stephen Okello (2021), "Phenomenology as an Alternative and Complementary Approach to Epistemology" in *American Journal of Humanities and Social Sciences Research* Volume-5, Issue-10, pp-148-157 [R21510148157.pdf \(ajhssr.com\)](https://www.ajhssr.com/papers/R21510148157.pdf) (accessed 4 April, 2023).

Classical philosophy, as understood as the senses that are common to the people, is not reserved to professionals and specialists as it had been in the past. Religion, as a phenomenon of common sense, reinforces the perceptions of common sense and thus theologians are leery of any change in philosophy. A change in philosophy means a change in theology. The inadequacies of common sense inherited from the past are often unrecognized, yet common sense is still uncritically relied upon by many contemporary philosophers. But their reliance is questionable. The following reflections of cognition, causality and reality may bring about a shift in their understanding.

a) Cognition

What do I mean by cognition? A current accepted definition states that cognition concerns the mental processes of an animate being which involves its particular intellectual activity, such as thinking, reasoning and remembering. Thus, cognition is an active process of coming to some form of knowledge. As a process, cognition is a mental activity understood in contrast to *cognitivism* which is not a process but a framework for understanding brain activity. Cognition and cognitivism both concern the operations of the brain but cognitivism, in its psychological form, has become laden with questionable assumptions concerning the functioning of the brain. Whereas cognition, I hold to be the phenomenological awareness of the mind's function within the brain.

One assumption within classical philosophy is that it measures the unchanging truth. This assumption has been inherited from ancient Hellenic philosophy. It should be remembered, however, that the appearance of Hellenic philosophy was an historical, unprecedented cultural development, and hence was not without its limitations which have been passed on to succeeding generations of philosophers. From a Hellenic perspective, any error arising within the cognitive process is recognized as “residing” in the object. Phenomenologists, however, think of truth not as a value that attaches to objective reality, but as a value that attaches to the process of gaining human knowledge of reality. Humans come to know either truthfully, or come to know falsely. The error is on the part of the knower, not the known. In fact, the error resides in a faulty process of the mind. Cognition is ultimately a philosophy of mind (i.e., metaphysical) as opposed to a philosophy of existence (i.e., physical) in which cognitivism has its roots. And the latter is an objective reality susceptible to becoming something different with the passage of time. Cognition, like consciousness, heightens or deepens with the passage of time.

Another questionable classical assumption is that the truth of any “thing” is guaranteed by God’s knowledge of it, since God has thought up the object as part of creation in the first place. However, God’s “higher mind” as a guarantee of the truth of creation is no longer taken seriously by many contemporary philosophers. God’s “higher mind” is a principle within philosophical thinking

characteristic of a time when philosophy was justified by faith, or carried out within a religious context. In a secular context, truth is disclosed through the actually existing minds of *homo sapiens* which are disposed to know the truth. Re-evaluating the legacy of the Western historical record is not always helpful in assisting the contemporary philosopher of mind to arrive at the truth. The result of such re-evaluation is often just a variation of a classical theme which recognizes “error” as an objective defect, not the subjective defective reasoning of the mind. The solution is a phenomenological study into the philosophy of mind. Such a study of the philosophy of mind is not a closed issue as some classical philosophers appear to have drawn from their studies in Western philosophy.³

Another assumption is that a failure to understand any aspect of the world resides in the world itself, not in the inadequate functioning of the human mind. That is a failure to recognize *homo sapiens* as active agents in the intellectual processes of understanding, not just passive agents. Objects in themselves cannot be agents, unless the object of encounter is another agent. In short, human inadequacies in understanding are often projected on to, or passed on to, the objects that agents desire to understand. Truth resides in our knowledge about reality, not in the reality itself.

³ Leslie Dewart (2016:22) cites Colin McGinn’s *The Problem of Consciousness : Essays Towards a Resolution* (Blackwell, 1991) as a case in point in *Hume’s Challenge and the Renewal of Modern Philosophy* (posthumously privately published).

An additional mistaken assumption from a philosophical perspective is that the organ known as the brain has no proprioceptive capacity. That is, the brain lacks any sense of self-stimulus arising from within the organ itself. The brain relies on stimulation from external sources, the senses of the organism itself. However, there seems to be increasing neuroscientific evidence that the brain can provide its own self-stimulation under specialized conditions. Drawing upon J. L. Taylor's neuroscientific definition, I suggest that the brain, although not a muscle, appears to act *as if* it were a muscle and exercises proprioceptive activity. "Proprioception, or kinesthesia, is the sense that lets us perceive the location, movement, and action of parts of the body. It encompasses a complex of sensations, including perception of joint position and movement, muscle force, and effort. These sensations arise from signals of sensory receptors in the muscle, skin, and joints, and from central signals related to motor output." ⁴

One possible approach to solving these inadequacies is to reject dualism in favour of duality. Dualism as a philosophy presupposes two independent and separate entities that necessarily exist as unrelated and self-sufficient. Duality, on the other hand, presupposes two entities that are in a relationship and neither is independent and self-sufficient but each exists by virtue of being in

⁴ Taylor, J. L. *Encyclopedia of Neuroscience* (Academic Press 2009, pp. 1143-49) <https://www.sciencedirect.com/science/article/pii/B9780080450469019070> (accessed 4 April, 2023).

the presence of the other. Human consciousness discloses this relationship between knower and known relative to the knower's capacity for processing the knowledge of experience. The process of inquiring into the relationship between knower and known is as ancient as philosophy itself which began within the ancient Hellenic culture. Dewart has noted that "there was no word in classical Greek to signify what in modern English is meant by "consciousness," and by equivalents thereof in the other modern European languages." ⁵ Understanding the conscious relationship between knower and known requires a reformulation of the philosophy of mind which is, in its contemporary expression, inextricably allied with modern science. Historically, the earlier and highly theoretical idea of "conscience" (a moral idea) has evolved into the more self-observable experience of human consciousness (an existential notion) or the study of human mental functions, i.e., a philosophy of mind.

b) Causality

The traditional understanding of the idea of perception bequeathed to Western philosophy by the ancient Greeks, has been misunderstood and, as such, has been subsequently handed on to successive philosophical generations since its origins in ancient Hellenic philosophical thinking. The misunderstanding of ancient Hellenic perception, i.e., its ontology, (the study of being) has

⁵ *Hume's Challenge* (p. 97).

become recognized by and accepted by many modern Western philosophers as representationism.⁶ Representationism is taken to mean the transfer of information about an object into the mind thus resulting in two simultaneous versions of the object: one in physical reality; the other duplicated in some manner in the mind. Rather, the proper cause of perception is to be assigned to the mind alone which does the perceiving of an object. Inanimate objects are known, but not known as agents that have an effect on human perception. Only suitably endowed organisms can perceive an object and subsequently conceive what it is. Conscious perception is an activity of the perceiver's self-differentiation from the object perceived. The perceiver as a "self" is other than the object perceived.

The "self" and the "other" as object have the characteristic of doing their own existing. Such independent existing is, in fact, the teaching of Thomas Aquinas, (*Contra Gentiles*, I, 14) according to Leslie Dewart. "In Thomas's own words: 'everything whatever has within itself its own existence [*esse proprium*], which is distinct from that of all others.'" ⁷ The existence of each cannot be shared between the two. But the two are in a relationship and the human will is not experienced simply as a confirmation of what the divine will, i.e., God, has conceived from all eternity. Ultimately, as I understand it, this insight developed into the theological perspective known as

⁶ *Hume's Challenge* (p. 57).

⁷ *Hume's Challenge* (p. 62).

Deism.⁸ This characteristic of causality is reserved to Western philosophy and it becomes readily evident to anyone who contemplates Eastern philosophies that such causality is not an Asian construct.

Believing in the separate and independent existence of the world, once it has been created by God, does not cancel out belief in the notion of God itself as an object of belief. It merely recognizes the role and meaning of God in a lesser capacity in the evolutionary experience of *homo sapiens*. A lesser capacity for the role and meaning of God in the contemporary world does *not* necessarily lead to atheism or antitheism as many contemporary philosophers believe today. This misguided belief is due to a failure to critically re-evaluate their understanding of physics and metaphysics as inherited from Hellenic philosophy in light of modern scientific developments. That is to say they adhere to an outdated form of philosophical Platonism in which, in light of modern advancements in scientific knowledge, there is a danger of God becoming irrelevant to contemporary life.

Only the physical (tangible) world can be perceived by suitably endowed organisms. But for suitably endowed organisms, it is

⁸ In the 19th and early 20th centuries, the word Deism was used by some theologians in contradistinction to theism. In their thought Deism reduced the role of God to a mere act of creation and after the original act of God withdrew from and refrained from interfering in the processes of nature and the ways of human discovery. In short, God exercised no influence on human affairs.

possible to conceive of a metaphysical world (non-tangible) that lacks physical existence, but is logically intelligible. In the absence of tangibility (for purposes of this essay, reality is tangible) there can be no perception, hence no cause and effect relationship in the traditional sense. As opposed to the ontological cause and effect (syllogistic) *experience*, the phenomenological cause and effect observation is a relational (inferential) *understanding*.⁹ Minds perceive, and when the human mind appeared, through a presumed process of proprioception, the physical world was already in place within which the human mind evolved. However, there is no existential reason to suppose that reality demands a mind to perceive it. In other words there was no necessity for human minds to appear. But human minds have appeared and with respect to the functioning of the human mind and with regard to what individuals think at any given time, Gregor Baum's study of ten individuals, of whom he asked "why do you think the way you do?" provides an example of the evolutionary interpretation of religious experience.¹⁰ Recall that evolution produces differences, not similarities, and the content of

⁹ For many contemporary philosophers cause and effect observations may be understood as either an analogue or digital event. An analogous experience is an experience in which information is processed within continuously variable physical experiences, or within streams of conscious life, which begins at birth and ends at death. Only conscious living agents can be aware of cause and effect experiences. A digital event is a phenomenon that reveals an event that is solely determined by the methods or principles of electronics. Only electricity, not consciousness, is required for digital events to occur mechanically.

¹⁰ *Journeys: The Impact of Personal Experience on Religious Thought* (1975) Paulist Press.

Baum's book bears out that observation.

Scholarship causes philosophy, and philosophy causes scholarship. "The philosophers invented the institution of scholarship *ab initio*, by taking advantage of the characteristics of the human mind. That they did invent scholarship at all, was a feat of ingenuity and creativity; relatively few early human cultures ever developed, on their own, the idea of using the human mind in a disciplined, rigorously rational manner."¹¹ This new approach to understanding the human mind provides a modern and fresh task for philosophy in addition to being the "love of wisdom" as the ancient Greeks understood it. The idea of using the human mind in a disciplined, rigorously rational manner has also been recognized by historians. Lord Acton has observed that, unlike poets, "when philosophers attempt to admonish or reform mankind by devising an imaginary state, their motive is more definite and their commonwealth is a satire as well as a model."¹² Also called into question by using the mind in a disciplined manner is the classical definition that reason distinguishes the human animal from the brute. I suggest that not reason, but the capacity for conscious cognition distinguishes the animal from the brute and from machines possessing Artificial Intelligence, preferably known as machine knowledge, to my way of thinking. (Philosophically, I reserve intelligence to living organisms.) Strictly speaking, however, the specific differentiating

¹¹ *Hume's Challenge* (p. 91).

¹² *Essays on Freedom and Power* (1949:166) The Free Press.

factor between animal life and machine functioning is not consciousness, which is attributable only to living organisms, but cognition. Machines (computers) may be made to function knowledgeably through programming, but humans come to cognitive knowledge *consciously* as self-reflecting living agents. Consciousness is a quality of human cognition, not mechanical knowledge.

Need I call attention to the fact that machines and computers are not alive? They cannot live in or with the world but only function within the world but not as an independent agent. They are machines that aid in human thinking, not machines that think. Therefore, it is incumbent on contemporary philosophers to re-orientate themselves in accordance with an understanding of modern *homo sapiens* and the machines they make for themselves. In this regard, in this re-orientation the difference between human sense perception and human understanding is not to be overlooked. Dewart has noted that: “According to the classical division of Aristotle, human beings are endowed with two quite distinct cognitive powers, *aesthesis* and *noesis*, sense perception and understanding. This division is empirically based and indispensable to understanding the entire nature of the conscious mind; surely all of us recognize the difference between sensing an object and understanding an explanation of an event.”¹³ Human beings, as causal agents,

¹³ *Hume’s Challenge* (p. 102).

consciously bring about an increase (or decrease) in their knowledge base either quantitatively or qualitatively. A computer, as an environmental actor, can only have its knowledge base increased quantitatively.

c) Reality

As a phenomenologist making sociological observations, I have come to the conclusion that the concepts of political decolonization, philosophical dehellenization and spiritual disenchantment are intellectual concepts, or notions, that are subject to evolutionary development. They are evolving out of their past histories into, as yet, an indeterminate future. At first blush these concepts appear to be negative but in fact are positive in describing a conscious effort at fashioning a future life within a lived reality. But the question arises: What constitutes reality? From a phenomenological perspective reality is the sum total of existing things, severally and collectively. To be noted is that “existence,” in our understanding today, has incorporated the Hellenic concepts of “to be” and “being” into the terminology of the popular mind. They are often considered synonymous. The reality of objects, however, either as existing or being, cannot be perceived by human beings as part of themselves. Each object must “do” its own existing or being something. A distinction must be made with respect to human qualities. The quality of honesty, or the virtue of courage, does not exist apart from the human organism itself. They are phenomenological notions dependent on a living organism. When the living organism ceases

“to be,” its qualities cease “to be.” I take it to be the case that the mind itself is a quality of higher living organisms.

As a phenomenological object, God is an invention to compensate for human imperfections, which has been projected into the future as a desired experience on the part *homo sapiens*. However, reality as an experienced phenomenon, there is no *empirical* support for believing that there is a meta-physical reality arising from the experience of the structure of physical reality. Leslie Dewart has remarked that “it is easy to lapse into the assumption that the human species is intended by nature to ascend ‘higher’ than it prehistorically did, but nothing (other than religious faith) so suggests.”¹⁴ That is to say that existential philosophy ought not be made to depend upon theology or religious faith. But the metaphysical phenomenon of mathematics clearly provides evidence to the contrary. Mathematical theory can be correlated with physical experience that has desired effects. Mathematical measurements give us the knowledge of facts, but without interpretation. That is why mathematical measurements are so useful to modern science as concepts of the human mind’s self-reflexive ability that make factual sense which philosophers interpret accordingly. Without mathematics, humans would not have physically walked on the moon.

¹⁴ *Hume’s Challenge* (p. 423).

Classically, in Western philosophy, reality has been conceived as a hierarchy of being, as a *scala naturae*, (ladder of life). Leslie Dewart quotes W. D. Ross in support of this view. In 1949 Ross wrote in his book on *Aristotle* that: “a hierarchy reaching continuously from the lowest beings, those most immersed in matter, up to man, the heavenly bodies, the intelligences [i.e. disembodied minds], and God [i.e., *to theion*].”¹⁵ Within a non-hierarchical or nodal pattern displaying the arrangements of relationships the problem becomes, from a Christian philosophical perspective, where to locate God. This possibility of locating God within a social schema is possible because ancient Greek philosophical understanding reduced the reality of the gods to that of knowability, an idea that Christians retained. Knowability means that everything in a system of classification (hierarchical or nodal) has its proper place. The implication is that knowability is a privileged way of relating to reality, by coming to know it only as *homo sapiens* can. Most *homo sapiens*, within the Western philosophical tradition, presuppose that reality is inherently knowable. However, this is questionable as a critical appreciation of Hellenic philosophy reveals.

Perhaps a better way in the 21st century is to conceive reality as resulting from the relationship that every real being has to its environment. Should a being have no relationship to its environment, it is not real. Tangible reality is phenomenologically

¹⁵ *Hume's Challenge* (p. 361).

recognized in a spatial/temporal context best conceived within a nodal pattern as opposed to a hierarchical one. Intangible reality is phenomenologically recognized within the environmental limitations of the human mind which is the basis of intersubjectivity. All philosophy depends on life; life, however, does not depend on philosophy. Philosophy is not necessary to life, but touches on the intellectual quality of a life well-lived. Philosophy is a “higher” activity of cognition characteristic of the human mind that brings about no effect in the object known. Even when the knower “philosophically knows” another knower, that other knower can be only *affectively* influenced by the knower. The philosophical conception of relationships arises from an existential and phenomenological understanding of life which constitutes a counter-cultural approach.

CHAPTER TWO

LAW, STATE AND *LAÏCITÉ*

Products of Human Consciousness

The Specificity of Human Consciousness

This chapter is a phenomenological approach to the three topics, Law, State and *Laïcité*. And I deliberately avoid the scholastic approach to thinking about Law, State and *Laïcité*. For an alternate appreciation of these topics, I replace the traditional philosophical concept of epistemology (ontology), a Western Hellenic inheritance, with a phenomenological concept of human consciousness that was unavailable to the ancient Greeks. Which is to say the ancient Greeks were not phenomenological philosophers.¹⁶ G. Lowes Dickinson has observed that it would be illegitimate to suppose “that Greek institutions were the result of a deliberate intention consciously adopted and approved by the average man. Like other

¹⁶ The advantage of this replacement is that consciousness, understood as an epistemology, frees human thought processes from the constraints of inherited Western philosophical norms. Phenomenology is a philosophy of consciousness of the moment. That is, its activity takes place only in the present. I concur with Quentin Lauer “that [phenomenological] philosophy can only consist in an analysis of what is present to consciousness prior to the philosophical inquiry.” (*Phenomenology: Its Genesis and Prospect* (1958:185) Harper Torchbooks). The philosophical approach to phenomenological interpretation that I undertake in this study has been formulated from the perspectives outlined in Leslie Dewart’s books, *The Future of Belief: Theism in a World Come of Age* (1966) Herder & Herder and *Evolution and Consciousness: The Role of Speech in the Origin and Development of Human Nature* (1989) University of Toronto Press.

social products they grew and were not made; and it was only the few who realized fully all that they implied.”¹⁷ It is within the phenomenological understanding of human consciousness that I place these three philosophical topics. That is, properly understood, these three concepts, as phenomena, are specific to *homo sapiens* and among other issues, contribute to revealing “human nature immediately intelligible to itself” as Leslie Dewart has stated.¹⁸ I recognize human life as distinct from infrahuman animal life which has no Law, no State, nor sense of *Laïcité*. In short, these three phenomena reveal unique aspects of mental (intellectual) human life to humans about themselves. Infrahuman organisms which may be observing humans, or their own actions, make no such provisions in organizing themselves as far as I can tell. Further, there is no external principle that specifies humanity, but factoring in personal and collective conscious human decisions concerning our environment does specify humanity. Humanity is more than a rational animal; humanity is a consciously rational human animal.

In 21st Century Western phenomenology the *person* is conceived as a center of consciousness, characteristically distinct from the animal which is biologically, but not self-reflexively, conscious. The character of mental activity and its processes differs between persons and animals. The latter lacks any concept of a unique self-

¹⁷ *The Greek View of Life* (1932:251) Methuen.

¹⁸ *Evolution and Consciousness: The Role of Speech in the Origin and Development of Human Nature* (1989:32) University of Toronto Press.

presence. Whereas, a person exerts him- or herself as a unique existence and self-presence within life towards others, a task not undertaken by brute animals. Further, a person is *present* to itself by making itself an object for self-reflexive observation. The person knows it is an “I” distinct from a “you,” or a “that” as an object of consciousness. Persons undertake philosophy and theology as academic disciplines in contrast to common sense. Phenomenological philosophy is the probing into the existential experience of the body and the immanent mind. Whereas theology is a probing into the experience of body and the transcendental mind. Existential phenomenology observes a single *felt* world, in contrast to theology which speculates on two *observed* worlds, i.e., God’s and humanity’s. Both perspectives, philosophy and theology, are proper activities of human consciousness, however, George Grant notes this restrictive difference about philosophy which also applies to theology. Writing on political philosophy he wrote: “Philosophy is always the account of actuality as it has become in any particular epoch, including the contradictions of that epoch. Therefore, philosophy cannot hope to reach any conclusions which transcend the social situation of its age.”¹⁹ I interpret this as a conscious phenomenological perspective differing from the classical ontological perspective of the Hellenists. Grant goes on to write:

Any other view of philosophy pre-supposes that philosophy is concerned with timeless concepts or, in other words, with

¹⁹ *Technology and Empire* (1969:89) Anansi Press.

an ahistorical eternal order. The belief that philosophy is concerned with the eternal order is based on the fundamental error of classical logic that being is eternally identical with itself.²⁰

An animal develops its consciousness by adding more knowledge from its experience. A conscious person does the same but with a qualitative result, i.e., good or bad. The development of consciousness is never morally neutral. The conscious human being *assigns meaning* to any event experienced by an individual and also by any community of individuals. But this is not the case of the brute animal, nor its community. Here I recall Ludwig Feuerbach's insight concerning the meaning of God: *The idea of Providence is the religious consciousness of man's distinction from the brutes, from Nature in general*; writing further, "but what bond can be supposed to unite brutes, or natural things in general, with God? God does not recognise himself in them, for they do not recognise him."²¹ Only humanity has been created in the image and likeness of God, and only humanity is conscious of its creator. It is the nature of human consciousness, as a function of the mind, to develop qualitatively, not quantitatively. Consciousness itself, as a quality of human life, is either heightened or deepened and is present or absent. It does not grow in mass or volume. Classical epistemology tends towards the knower conforming, in some manner, to the thing known because of

²⁰ *Technology and Empire* (1969:90).

²¹ *The Essence of Christianity* (1957:299/300) Harper Torchbooks.

the characteristics of the object known. To the contrary, consciousness as a phenomenological experience tends towards the knower *relating* to the known, in some manner, due to the characteristics of the knower. That is, humans are “ethical knowers” who specifically tend to behave with the aid of a conscious mind that constitutes their process of moral thinking.

Given its dynamic function consciousness reflects a process of coming-to-be human, rather than reflecting a static psychological quality. Through socio-historical experiences, organisms so disposed to know them, determine their human status. In short, humans have a biography which is conceptualized and recognized within a particular cultural context. Initially a private experience, human consciousness evolves through a communitarian cultural context which, through time, may be expanded to incorporate the experience of foreign cultures. Such incorporation means to think in new concepts, as I attempt to do in this essay, and to develop one’s original activity of relating to the truth of experience, be it of God, of Law, of the State or of *Laïcité*. Given that consciousness relates the Christian human being to new forms of experience through culture and history, often the Christian experiences a real intellectual transformation recognized in Western philosophy as the process of religious de-hellenization. Its opposite, the philosophical process of the hellenization of Christianity, was a gradual process of philosophical evolution within an earlier culture to a later one. Ancient Hellenism was the dominant cultural form of the whole

world as it was then known to them. To all intents this cultural form did constitute the equivalent of the philosophical consciousness of the ancient ecumenical world in all matters of common sense experience.²² Strictly speaking however, the modern understanding of consciousness is absent from ancient Hellenistic philosophy. As Leslie Dewart notes:

The Greek word used today to mean the same as *consciousness* — namely, *syneidesis* — is very ancient. Although it does not seem to have been part of the technical vocabulary of the classical Greek philosophers, it is found, for instance, in the *koinē* of the New Testament; its Latin equivalent, *conscientia*, also goes back to the same period.²³

From my perspective, then, given the legacy of the Hellenization of Christian thought, it is legitimate to view de-hellenization as a phenomenological process of interpretation envisioning a non-dogmatic, reasonable, and pragmatic understanding of the faith that specifies conscious Christian belief.

At our time in history, consciousness is at the base of all social relationships, but to be noted is that consciousness itself never evolves. The human organism, however, as a part of the natural environment does evolve which is to say that consciousness cannot be equated with the human person. Consciousness is but a

²² I understand ancient Hellenism to cover the period between the deaths of Alexander the Great in 323 BCE and Aristotle in 322 BCE, and which formally ended with the Roman conquest of Egypt in 30 BCE.

²³ *Evolution and Consciousness* (p. 49).

particularly unique function of the person. Once a human organism is conscious, barring any form of trauma, consciousness is only deepened or heightened in relation to its objects. Possessing the quality of consciousness, the personal “self” specifies a human being living in society and within a particular culture. Computers have no such self-consciousness since they are not living organisms. Further, animal organisms do not choose to be conscious. They acquire consciousness, just as they may lose it by becoming unconscious. And animal consciousness must be present before the organism (i.e., *homo sapiens*) can acquire the human form of consciousness through a process of personal experience and socialization. Consciousness does not duplicate reality in the mind, but only alerts the mind (i.e., intellect) to the appearance of reality. I may know *that* something is “there,” but I may not know *what* that something that is there, is. Consciousness becomes recognized in other humans through the specific mode of human communication known as speech, or the thematic conceptualization of experience. This ability to conceptualize through speech the human experience of the Law, the State and of *Laïcité* is at the basis of this book.

Law, State and *Laïcité* are observed as non-tangible phenomenological notions of reality in this study. They do not exist as objects independent of the observer. They need a human mind to “observe,” or to be conscious of the appearance of their reality since they are constructions of the mind. For my purposes in this study, I presume within each main concept a sub-concept in relation to the

main phenomenological concept. That is, each main concept can serve as a sub-concept in another main concept; i.e., the phenomenon of Law contains within it the phenomenon of Religion; the phenomenon of the State contains within it the phenomenon of a Nation; and the phenomenon of *Laïcité* contains within it the phenomenon of Theology. Historically, the concepts of Law, State and *Laïcité* must be preceded by Religion, Nation, and Religion. Whichever relationship they have among themselves, they are not ahistoric realities. In phenomenological philosophy these notions are, in fact, the products (metaphysical entities) of distinct mental activities which are related to each other within the human mind.

In the history of Western philosophy, and possibly within the history of non-Western philosophy, two kinds of mental activities may be recognized. The first activity is the building of an intellectual system upon the foundational teachings and interpretations of a memorable person. Plato systematically presented the dialogues of Socrates, presumably to make points which were significant to Plato's purposes. In Britannia.com one reads:

In them, [The Dialogues] Socrates typically engages a prominent contemporary about some facet of human excellence (virtue) that he is presumed to understand, but by the end of the conversation the participants are reduced to aporia. The discussion often includes as a core component a

search for the real definition of a key term.²⁴

As well, St. Augustine and St. Aquinas fashioned their philosophical systems founded on the insights of Jesus of Nazareth that were amenable to their purposes. The second activity follows necessarily upon the first. Subsequent philosophers reflected upon the systems of memorable persons, evaluating and updating them to retain their suitability and usefulness for each generation as their experience evolved. Such a conscious historical application may be undertaken only by *homo sapiens*.

As a phenomenologist, I favour observing, rather than speculating about the human experience and I regard the subsequent formation of mental notions as data for interpretation. Rather than the “Theory of Forms” as postulated by Plato and the “Theory of Ethics” as postulated by Aristotle I favour knowing the relationships among phenomena in general which allows for a nuanced understanding within conscious experience. In the classical discipline of Western philosophy, the evolution of the “aboriginal, unprecedented cultural development” of Hellenic philosophy out of ancient Greek myth has provided an academic infrastructure of eternal stability eliminating the necessity for philosophers to perpetually construct various schemata of novelty and creativity. This “aboriginal, unprecedented cultural development” was a disadvantage according to Dewart.²⁵

²⁴ <https://www.britannica.com/biography/Plato/Early-dialogues> (accessed 4 April, 2023).

²⁵ *Hume's Challenge* (p. 80).

In contrast, however, Asian philosophy provides its eternal stability, not through evolution but through the repetition of experience. Asian philosophers simply move around within their system, but never move out of their system. This suggests, to the Western interpreter, that the notion of time in philosophy is linear, whereas in the Eastern philosophical interpreter the notion of time is circular. Either is culturally acceptable. However, it seems to me that within modernity philosophers within each system must be prepared to re-conceive their experiences contingent upon a new understanding of time and place in light of the phenomenon of relativity. Only organisms capable of a specifically human consciousness can possibly undertake this task.

Observations: The Human Self

In traditional Greek metaphysics and Christian theology, the individual self was not allowed to be as central as it is in modern philosophy. Pre-Socratic philosophers sought to discover an ultimate principle by which everything could be known. In their attempts they identified air, fire, water, etc. as that principle. Later, Socrates claimed that knowledge was nothing but recollecting what was previously known by the knower and had somehow been implanted in the mind by a superior agent. The purpose of human existence is for the philosopher to discover what is already there, that is, to arrive at a state of cognition or knowledge according to the classical philosophers. To arrive at this state of cognition the philosopher must act as his or her own catalyst at facilitating this

recollection by questioning presumed or inherited beliefs by which to arrive at the truth of philosophical knowledge. This method of arriving at the truth is commonly known as the Socratic method. In this process there is no allowance for original individual autonomy in the cosmos in that the human individual came after the cosmos was established and whose presence was differentiated and dependent upon the cosmos. Since the individual is posterior to the cosmos, and being incorporated as a part of the whole cosmos, the individual is assumed to exist as subservient to the whole cosmos into which it was born. Within its own unique philosophical understanding Christianity will confirm this existential status of the individual under the supervision of God.

Contemporary philosophers, by appealing to a philosophical and theological anthropocentric world view, reject Greek metaphysics and Christian theology and treat *homo sapiens* as the most significant presence in the cosmos by placing the individual self at the centre of creation. In an anthropocentric interpretation God or the Divinity ultimately becomes recognized as but the human self projected as perfected, or flawless humanity. Which is to say that philosophers within the modern era have ignored philosophical history and fashioned the norms of selfhood and human dignity out of themselves. The modern self (a first-person point of view) of Western philosophers is fashioned out of a linear concept of time, within the context of evolution. Whereas non-Western philosophers conceived the self (not as a first person point of view) but within a

cyclic notion of time without any notion of evolution. The notion of time, linear or cyclic, is an ontological notion common to scholasticism and phenomenology. That being accepted, Leslie Dewart's (1922-2009) observation is worth keeping in mind when it comes to the phenomenological conception of the self.

The phenomenological method, then, is not the diametric opposite of the ontological; it is a more comprehensive one than the latter, whose merits it preserves and whose inadequacies it tries to remedy.²⁶

For phenomenological philosophers the concept of the self, and the practice of individual intentionality are seen as devalued by the rationalism and objectivism of modern philosophy which reduces the self to a scientific philosophy making it impossible for the self to develop full potential. Timothy Williamson has written a book on “doing philosophy” that to my estimation is but an *aggiornamento* of the Platonic/Aristotelian tradition which is limited to the rationalistic and objective nature of philosophy. He writes:

Philosophy is a science in its own right. Interconnected with the others and as autonomous as they are. It is also under constant pressure to become something else: ... Whether or not it does, who knows how well philosophy will survive the cultural prejudices against any enterprise of its kind? Still, philosophy arises from a natural drive in articulate human curiosity to go on to one sort of extreme in its questions, and

²⁶ *Evolution and Consciousness* (p. 31).

a determination to use the most apt methods available to answer them, no substitutes accepted. That drive and determination will not easily become extinct. Progress in philosophical theories makes for progress in philosophical methods, and progress in philosophical methods makes for progress in philosophical theories. ... Just as other sciences improve their methods, it will happen not by some melodramatic break with the past, but by a difficult iterative process of self-refinement.²⁷

Contrary to Williamson, repetition does not bring about advancement. As a scientific methodology, however, it may bring about improvement as a variation on a theme. There are from my observations, three objections to Williamson's scientific perspective. One objection is that philosophy is a science; a second objection is that "curiosity" replaces "wonder" in initiating philosophical motivation; and a third objection is that an iterative process is progress. When combined within Western classical philosophy these observations impede an evolutionary development of the self. However, they may be overcome and the self may advance in its self-understanding within phenomenological philosophy.

Philosophy as Phenomenological Consciousness

The distinction between appearance and reality is foundational to

²⁷ *Doing Philosophy: From Common Curiosity to Logical Reasoning* (2018:141-42) Oxford University Press.

Western philosophy. The word phenomenon simply means reality as it appears to consciousness, or simply appearance. I acknowledge Kant's understanding between the noumenon (things as they are themselves) and the phenomenon (things as they appear to the mind) as useful concepts in discussing objects of consciousness. Phenomenological philosophers are always conscious of an objective some "thing," upon which to focus, either existing externally to the mind, or within the mind but fashioned by the mind itself.

Phenomenology describes the context that makes individual intentionality possible, such as the conditions of time, space, motivations, activities, horizon, etc. in which humans live and give meaning. Time, space, motivations, activities, horizons, etc. have no meaning in themselves but only the meaning assigned by conscious individuals. By something being intentional, I mean the presence of a purpose within human consciousness, that is, a concept or notion as a product of attention. At the same time, the immanent object is transcendent to human consciousness because there are aspects of it that are unknown to the knower. By way of example, the visible side of the moon is immanent to the viewer, whereas the invisible side of the moon is transcendent to the viewer, not being present to the viewer's conscious awareness. From a philosophical perspective, when God is present to human consciousness, and experienced as reality, it simply means that God is immanent in human experience up to a point. There are aspects of God outside human experience

that make God transcendent, that is, unknown to humans living in this world. Or, it may mean that human transcendent experience of God is, in fact, an imagined experience with no real external reference. Thus transcendence may be considered characteristic of this world, not another world. Any reference to God, then, becomes a matter of faith, not philosophy.

LAW AND RELIGION

The Nature of Law

Law, like religion, is artificial in that it is a non-substantive intellectual construct of society and culture. Law is a social construct of experience fashioned within human consciousness. As a conceptual construct, law is a metaphysical reality that is no less real than the human physical environment given the effects it produces. Humans must adjust to law as they must adjust to their physical environment. Law follows no predetermined programme, but arises out of the experience of *homo sapiens*. Jurisprudence is another name for the philosophy of law, for legal philosophy, and for the history of law. The terminology notwithstanding, the content of jurisprudence remains more or less the same. Philosophy of law attends to foundational questions which are not static but change over time. Such as: What is law for? Why is there law? What is the nature of law? As a universal phenomenon, law as fashioned by *homo sapiens* and contextualized by their cultures, is known as positive law. Natural Law is not positive law since it is not based on human experience. Natural law is cosmological and in the Western tradition of philosophy is rooted in the Hellenistic conception of Fate. Events occur “necessarily,” or fatefully, within the context of natural law.

In non-Western cultures law is characterized by multi-form hybridity, that is, as a mixture of many different customs and beliefs.

A multi-form hybridity illustrates the dynamic nature of law and its varied interpretation, or jurisprudence. In the Anglo-American tradition, as well, law is constantly changing and its jurisprudence has a world-wide influence. Various cultures have particularized what they inherited from the Anglo-American tradition within an empirical political and economic colonialization. However, laws enacted within a process of decolonialization are designed to overturn the evils of colonialism but, at the same time they often interfere with the foundational principles of the Laws of Empire that have become enshrined in a political constitution of former colonies. Ideally, jurisprudence or the interpretation of law, has to do with the “best practices model” of any inculturation of legal practices from foreign sources through military conquest or colonization. The “best practices model” raises the question of the authenticity, applicability, and legitimacy of law. The law, local or international, has no force within and of itself. In theory, the application of the law requires human agency which exerts only the moral force of affectivity and acceptance by its subjects. However, in the modern State, moral agency has been intentionally surrendered to the civil power, i.e., a police or military body that is entitled to use force to achieve compliance. Within modern Canon Law moral and ethical persuasion, based on correct human behaviour, is used to achieve compliance to the legislator’s intent.

Law does not have its justification in itself. Both civil law and canon law point to something beyond, i.e., human behaviour, which gives

the law its *raison d'être*. Civil law appeals to Nature, or the cosmos, and canon law appeals to the revelation of God, or more broadly, morality and ethics. However, legal positivists deny an external reference as a criteria for legal justification. For them the justification of law is *sui generis*, that is, the law is its own self-justification. No Nature or God is needed for interpretation within legal positivism. Generally, in the West, law is a command issued by a sovereign who enforces the command by a threat of a sanction to which people are obliged to obey. For an excellent and clarifying discussion on the distinction between Natural and Positive Law see Aakash Singh Rathore's lecture in the module "History of the Philosophy of Law" within the paper "Philosophy of Law."²⁸ The threat of sanction in civil law is replaced by moral motivation within the practice of canon law. However, morality/ethics is slowly encroaching into contemporary legal positivism thus providing partial justification appealing to Natural Law. All law evolves and thus undergoes some updating, through legislators, to meet the needs of the time. Given the process of updating, legislators, are able to solve internal contradictions evident within legal systems. Internal contradictions occur when a sovereign authority gives the command to obey, or disobey, the same rule when it appears that there is equal justification for either command.

²⁸ Cf. ePathshala (India) [e-PGPathshala \(inflibnet.ac.in\)](https://e-gate.inflibnet.ac.in/) (accessed April 4, 2023).

A Brief History of Canon Law

Within the Western context a proper understanding of contemporary Civil Law requires an understanding of the influence of Canon Law. Generally, Canon Law refers to the body of rules accepted by the Christian church (Catholic, Reformed, Protestant and Orthodox denominations have all legislated their respective canons). Historically, Canon Law was prominent in the civil governments of the Christian kingdoms of Europe in the Middle Ages. Today, canonical norms are more or less restricted to an ecclesiastical role for the governance of a community founded by Jesus Christ.²⁹ As the political influence of the Church developed in European History with the Roman Empire and the Papal States, the influence of Canon Law also evolved. In the early period of the history of Christianity (the second and third century), “canon” meant a norm, or regulation, establishing a basis for the faith and for ordering the life of Christians. From the 4th century onwards these canons chronicled church law and the interpretive decisions undertaken by the synods of the Church. To this day, the Canon Law of the Orthodox Churches in its constitutional role and interpretation retains remnants of these earlier traditions. The need for a Codex system of understanding with general authority became necessary as theological uncertainties or disagreements developed due to the geographical and cultural expansion of Christianity. Most of the

²⁹ Note that the Code of Canon Law of the Catholic Church only applies to the Latin Rite (CC 1) and that in its application of the norms it addresses the supreme law of the Church, the salvation of souls, which must always be kept in view (CC 1752). CC 1752 is the final norm in the Code.

early Canon Law, which developed simultaneously with ancient Roman Law, was integrated into the legal system of Byzantium by order of the Byzantine Emperor, Justinian (6th century).

Later, Thomas Aquinas (1225-1274) philosopher and theologian, along with other significant theologians influenced by the philosophy of Aristotle wrote authoritative works that became foundational to the early interpretation of Catholic Canon Law. However, in both the 1917 and 1983 Code of Canon Law, Aquinas is the only name mentioned with regards to the training of priests (as governing agents in the Church). Such training is to be in accordance with his method, doctrine and principles. Most of Aquinas' work attempted to establish the truth of the Christian faith by recourse to reason. Having recourse to reason gave the faith a degree of autonomy from the dogmatism of divine sanctions as exercised by many within the authority of the Canon Laws. Leslie Dewart has noted Aquinas' contribution to human autonomy, flaws included.

When Christian philosophers begin to tell people, as St. Thomas did, that they exist in their own right, and give them the premises from which they will in time deduce that they, too, are creators, and that they have a decisive role to play — for better or for worse — in the [legal] shaping of themselves, and that it is better to have creatively attempted something and failed than to never to have created anything at all, one has to expect that some people — perhaps even most people for a while — will not know just what to do with their

discovery and will not quite manage themselves well.”³⁰

In 1917, the first Code of Canon Law for the Roman Church was promulgated. It had an important influence in strengthening the Church externally and internally. However, the Codex became outdated, probably because its intended audience were scholars of Canon Law, rather than the millions of laypersons under the authority of the Church. Thus, in 1983 the second *Codex Iuris Canonici* was implemented, and to this day, it is the authoritative Code for the Roman Church.³¹ Canon Law has two domains of jurisdiction, one inward and the other outward. The inward domain is spiritual (subjective) with faith in revelation from God, and the the outward domain (objective) which is a judicial composition of laws contingent upon humanitarian religious and societal values. Theology, as an ecclesiastical discipline without canonical norms, leaves the church community without an ordered life. Canonical norms, on the other hand, without theological reasoning lack the necessary moral persuasiveness for compliance and deteriorates into excessive conformity to law, or mere legalism. It can be shown that

³⁰ *The Foundations of Belief* (1969:206) Herder & Herder.

³¹ Concern for the relevance of Canon Law to the faith of the Church was at the basis of the Second Vatican Council as ecclesiastical historians have noted. A criticism of Vatican II over the lack of lay involvement, with too much focus on the clerical audience, was made by Robert Adolfs. “Essentially, the Council was little more than a professional discussion between administrators of the Church, but popular imagination turned it into a spiritual rebirth of the Church.” *The Grave of God* (1966:9) Harper & Row. This “spiritual rebirth” is a phenomenological observation, not a legislative observation.

the Canon Law of Roman Catholicism has influenced the formation of the nation state. Foundational parallels can be drawn between the structure of Canon Law and the legal structure of the modern nation state. Further, the Pope is akin to an authority figure within a nation state such as a President or Prime Minister. And the Canon Laws are generally secularized within a nation state into societal and civic legislation. There is another similarity to Canon Law that is evident in most civil legislation. Just as God has the power of effecting miracles within a religious understanding, the Sovereign enjoys exceptional effective powers within secular understanding, such as the authority to declare a state of emergency or a state of war. All significant concepts of a modern legal theory, within a modern nation state, are secularized theological concepts, or their modified religious equivalent. In short, Canon Law reflects sufficient aspects of the Natural Law, that is, law dependent of God's creation of an Eternal Law, law not contingent upon history, but transcendent to history, as Divine Law having been exercised by God's authority. But Canon Law also has provisions for Positive Law enacted by human beings as the history of legislative evolution shows.

Legal Pluralism

Legal pluralism is a phenomenon that cannot be satisfactorily understood within a hierarchical system, but is better understood within a "nodal" system. Within cognitive psychology the nodal model is also known as the connectionist model. As a negative phenomenon, legal pluralism, (or better legal plurality), does not fit

above or below any other phenomenon in a hierarchical arrangement. As an attitude towards law, legal plurality requires a new metaphysical structure that is patterned not on any ascending or descending arrangement of Platonic Ideas, but on a model of relationships based on the physical structure of the human brain.³² The brain structure reflects a functioning model, with more than one centre of activity functioning with a network of nodes of different significance. Not all nodes function at the same level of activity or engage in the same tasks. The philosophy of law or, jurisprudence, will in the 21st century and beyond take on a phenomenological experiential interpretation, (a type of *ressourcement*) as opposed to a traditional updating (a type of *aggiornamento*) of Hellenistic philosophical and legal inheritance.

What is a Nation/State?

I conceive nationalism as an ideology that serves the purposes of political power as it manifests itself in a particular aspect of modern nation-states. There is always the danger of nationalism replacing nationality in political affairs. To the contrary, nationality does not connote an ideology, as such, and has no specifically declared end. Nationality is the qualitative understanding that members of a nation

³² This new mental structure, abstracted from the physical brain, and conceived within metaphysics is often referred to as theoretical physics. As a mental structure it is a hybrid of observable (objective) reality and conceptual (mediated) reality. Within the field of modern science, I suggest that Carlo Rovelli's, *Reality is not what it seems: A journey to Quantum Gravity* (2017) Penguin, is an example of a hybrid physical/conceptual approach.

possess when they establish a public notion of their common identity in terms of spiritual, aesthetic and societal experiences. In short, nationality implies no political organization based on the possession of a common territory whose governors exercise control over the inhabitants of that territory. It is the case that nations enjoy a phenomenological transcendence from the influence of political power, however, they may give themselves over to moral authority in light of their historical cultural existence. That is to say that a nation is not strictly political in its composition.

I suggest a re-imagining of the State by differentiating between the notion of nation and the idea of a society which are components of the State. Nations and societies within a State are not identical phenomenological entities. However, they are foundational components which constitute countries or States as political entities. The modern State may contain within its borders various nations and a multitude of societies. Historically, in the Western political perspective, to equate the State with an ethnic or linguistic group is distinctively an early modern perspective intended to further the interests of an organized and self-interested group of a particular people, with minimal interest in universal human, social and spiritual matters. In other words, multinationalism was not a factor in early statehood. Initially, a nation/state understood itself as externally aggressive and internally competitive in order to ultimately negate the influence of other nations except its own. This attitude is easily linked to the history of colonialism dating from

ancient times to the beginning of the 20th century. Today, civility and cultural variation are slowly developing and being consciously established within the modern Nation/State, and not merely as a political agenda, but as a general societal agenda to prevent the dominance of nationalism over nationality.

In the context and history of Western civilization, the public life of the people has always been controlled by the State, such as in ancient Greece and Rome and also in the modern European societies. But in the Orient, in China and India, for example, societal laws and local cultures, and not a standardized State, have been the controlling agencies. However, since the middle of the 20th century, with the advent of globalization, there are signs of this changing. The primary political purpose of all societies is self-preservation which is evident within the modern Nation/State. The treatment of societies, being the smaller units of an organized presence within a State, hence less powerful, clearly discloses the morality of the governing individuals within the Nation/State. The social services available to the nations and societies, not the regulation of the political State, constitute the moral identity of the modern State.

SOCIO-POLITICAL AUTHORITY AND THE STATE

A Basic Understanding

A State is a phenomenological perception wherein the State is a notion of civil society enclosed in agreed-upon territorial boundaries. The State uses some form of a social contract to govern its citizens in modern times which has its roots in an original covenant suggested by such philosophers as Hooker, Hobbes, Locke, etc. The social contract, as a model, actually goes back to ancient times in which an original group of people conferred power on a person or another group of persons. That is to say that political philosophy was a societal reality before the formal Social Contract model embraced the political ideals of Plato and Aristotle. Many contemporary philosophers consider Plato a prototypical political philosopher whose ideas paved the way for a developed European political vision. As the *Stanford Encyclopedia of Philosophy* notes; “Along with his teacher Plato, Aristotle is generally regarded as one of the most influential ancient thinkers in a number of philosophical fields, including political theory.”³³

The notions I put forward here reflect the particular characteristics of the ideas of Thomas Hobbes, John Locke and Jean Jacques Rousseau that are foundational to modern States. They are ideas that have arisen in particular cultures and now seem to be forming a political philosophy that is influencing the global community.

³³ <https://plato.stanford.edu/entries/aristotle-politics/> (accessed 4 April, 2023).

Further, there are indications, to a sufficient degree of persuasion, that the formation of the social contracts envisioned by these individual philosophers reflected their acceptance of the Christian theology of Revelation. All humanity in the beginning lived in a peaceful “state of nature” without any government or law to regulate them (the state of nature being analogous to the Christian heaven before the Fall). The problem comes after “The Fall,” with the desire on the part of humans to acquire property individually which led to specific hardships and oppression of certain groups within society. Modern wars are still fought over territory more than for any other reason. Humanity’s fall from grace disclosed an existential need to establish a contract of some sort to overcome these hardships resulting in ideal necessity of a Sovereign, or of a State. The understanding of a pristine state of nature virtually came to an end the moment a population agreed to establish a form of governance over itself. (There are no forms of government or laws in heaven.) The social contract theory was intended to establish the legitimacy of the government (according to the norms and terms of the population) and establish a governing status independent of any divine agency. The social contract itself thus established a new societal order and put an end to the retention of the notion of the state of nature, thus making it a requirement that individuals cooperate with each regardless of the varying degrees of success. In theory, at least, the social contract can achieve this aim to the level attained by a best practice model when everyone in the State becomes a vested partner in the contract.

According to Thomas Hobbes, (1588-1679) the fear of death and distrust towards one another are the primary reasons behind the emergence of a social contract and the formation of a politically sovereign society. He states that people mutually agree to surrender their natural rights to a sovereign by conferring him or her the power to execute, legislate and protect the laws of the society. In this way, people are able to establish stability within society. The same reasoning enables God to establish stability within the state of nature since creatures are subservient to their creator. Hobbes accepted the absolute authority of the sovereign state. He considered the sovereign, entrusted with all powers, as the highest authority whose actions could not be judged, whereas the subjects would have to follow his commands unconditionally. The subjects have no claim against the sovereign, nor do they possess a freedom which the sovereign must respect under any circumstance. In this way, the sovereign was authorized to impose law and order according to his or her will. According to Hobbes, people have a vested interest in their personal gain and, hence, they pose a threat to others, and one's security becomes someone else's insecurity. In Hobbes' understanding, the state of nature is not a stable phenomenon and the establishment of a sovereign or monarchy becomes indispensable to correct this instability. Thus, this presents an argument in favour of a monarch to offset the destabilizing social effects of a democracy. To achieve this stability, the sovereign often exploits the fear instilled in the population to insure the safety of the

system. Ideally, a sovereign ought to be incorporated by the people into the social contract and, hence, theoretically would not contradict the good of the people. Hobbes views this as the most preferable form of government which can never be ultimately overthrown.

John Locke (1632-1704) gives a different account of the state of nature. He is less pessimistic than Hobbes and his insights have been credited with establishing the notion of a liberal philosophy. According to Locke, the state of nature was a state of peace and goodwill but yet containing certain deficiencies. He concludes that the deficiencies in the state of nature forced humanity to put itself under the regulation of some form of government. One deficiency he noted in the state of peace and goodwill has to do with the acquisition of property by certain individuals which is directed to achieve the peace, safety, and public good of all the people. The fundamental aim of government says Locke, is the preservation of mankind which is intended to protect and promote their natural rights. Locke clarifies that as long as the government is able to fulfil this purpose, the laws it enacts are valid, but when it is not capable of functioning justly or has become tyrannical, the people have the absolute right to reclaim their authority and institute another form of government. In Locke's view, then, unlimited sovereignty would be contrary to natural law. The fundamental difference between the views of Locke and Hobbes regarding the description of the state of nature lies in the fact that Locke presents a generous and noble

picture of the nature of humanity, whereas Hobbes considers humanity to be primarily selfish and competitive.

Jean-Jacques Rousseau's (1712-1778) view of the social contract is the most optimistic of the three. The people have elected to be ruled by some agency to protect their rights, property and happiness. Hence the governed do possess the right to revolt if the government violates the conditions of the social contract and does not fulfil the purpose of its mandate. That is, if the government fails to obey the terms of the social contract. Thus, Rousseau offers a different interpretation of the social contract theory. He presents a very pleasant and contented description of the state of nature where humanity was happy, free, peaceful and equal within their existential context. Yet, in the state of nature, people were like an uncivilized population in that their actions were primarily motivated and stimulated by immediate needs, such as food, sleep, sexual satisfaction, etc. But a free-will and a capacity for self-improvement distinguished them from brute animals. The lives of the uncivilized population were undistorted, timorous, secluded, reticent yet peaceful. That is they were not overly worried or concerned about the availability of the necessities of life for the future.

According to Rousseau, in the state of nature, the sense of morality had not been developed in human beings. There was no determinate understanding of right and wrong, virtue or vice, moral and immoral. Though they had been endowed with the faculty of reason,

there was no need to develop it practically and functionally within the state of nature. Developments subsequent to the state of nature, however, made the use of reason a factor in humanity's social evolution from a primitive state of nature to a civilized society. For Rousseau, this implied an extremely rigorous, strong and direct form of democracy in which an individual cannot transfer his or her will to another, to do with as he or she sees fit. However, this transfer of individual wills can possibly happen in representative democracies. To Rousseau's way of thinking the general will depends on the periodic coming together of the entire democratic body, that is each and every citizen, to decide collectively, and with the greatest unanimity, how to live together, and what laws to enact. As the general will is constituted only by individual wills, these private, individual wills must convene regularly if the general will is to be maintained. It is easy to see in Rousseau's concept of the social contract theory the influence of his Calvinistic and Catholic upbringing, an observation many have no doubt made before.

For the phenomenological interpretive purposes of this brief reflection, the main notions of these authors concerning political authority are: One, that Hobbes accepted the notion of authority of a sovereign be localized with all the powers in the hand of monarch and denying any power to the citizens. Two that Locke accepted the notion of power of the citizenry, but at the same time also held that citizens are entitled to exercise their sovereign power only when the government is working inefficiently or is failing in its duties. Three,

the Social Contract notion of authority presented by Rousseau, with its easily recognizable religious roots, effects a compromise between constitutionalism of Locke and absolutism of Hobbes.

RELIGION AND *LAÏCITÉ*

Laïcité: Concerning Normative Concepts

I introduce the discussion on *Laïcité* within the same perspective as the discussions on Law and State which were founded upon the principles of Hellenistic philosophy and Roman polity. The main difference is that *laïcité* is conceived as a religious phenomenon, not a secular one. Contemporary Western humanity needs an adequate philosophy that supports its religious belief and that assists with daily living in a modern scientific context. “The philosophy of the law and of the State have always been included in social philosophy,” according to Joachim Giers.³⁴ Within this general understanding of the religious dimension of Social Philosophy, I place *laïcité* as part of the theological social reform of Western politics. I realize that the interpretation of political social movements, past and present, is often undertaken by political sociologists, and I hope that many social philosophers and theologians will assist in bringing about an adequate religious reform in the public forum. From an historical perspective, I find it to be the case that the early phenomenological philosophers engaged in a type of social philosophy that foreshadowed an adjustment to society given modern scientific thinking, but their efforts have borne no great fruit. According to Quentin Lauer:

Even the extent to which he [Husserl] ‘rethinks’ philosophy as it has presented itself in the course of history is extremely

³⁴ *Encyclopedia of Theology: A Concise Sacramentum Mundi* s. v. “social philosophy,” (1975, ed. Karl Rahner) Burns and Oates.

limited; this he leaves to those who follow him in the phenomenological tradition; they will constitute the 'scientific community' within which a strictly scientific philosophy, ever aware of its evidences, is to be realized.³⁵

Scholasticism has also failed to keep abreast in this area of a scientific philosophy. A new place for God needs to be consciously negotiated within the future of Western civilization. Classical theism itself cannot be updated satisfactorily (*aggiornamento*) to counter the inadequacy of scholasticism in a scientific age. Nor can its opposite, atheism, as a negative concept be accepted because it simply denies God, but does not affirm humanity. The modern scientific philosophical task is to affirm humanity and to find a new place for God. A Marxist vision of atheism, as historical analysis shows, attempted to affirm humanity while, at the same time, rejecting God. However, given its humanitarian focus, a Marxist understanding of atheism may be re-considered as a positive concept. A Marxist anthropology considers humanity in its own right, without denying God's existence. Later interpreters of Marx, however, have mistakenly suggested that the liberation of humanity from servitude imposed by capitalist exploitation will allow religion to die a natural death. Their interpretation is based on an inadequate and misunderstood anthropology. Leslie Dewart's observation:

Like every other contemporary atheism, Marxism is

³⁵ Further, in a footnote Lauer writes: "It would seem that in later years Husserl had lost the hope that this 'scientific community' would ever assemble." *Phenomenology: Its Genesis and Prospect* (p. 107).

therefore a humanism. But unlike absolute and unconditional atheism, Marxist atheism is atheistic because of a prior commitment to humanism, not vice versa.³⁶

What is needed today is a philosophy of religion that is proper to an individual self-consciousness and a collective consciousness with respect to the place of God in contemporary Western society. *Laïcité* arises from this sense of autonomous individual and collective self-consciousness. *Laïcité* in modern governance is not concerned with religion as it is defined by its doctrines and dogmas, but is concerned with religion as phenomenon as defined by socio-cultural functions. Which is to say that faith in God, or revealed religion, does not settle anything about the terrestrial form of governance in human life.

Law and religion are both normative constructs. They entail the imposition of standards of conduct on groups of individuals, who are required to comply with the norms of law and religion even at times against their will. These norms also apply to the individuals singly, namely, that of being benchmarks for individuals to evaluate their personal conduct. And, in certain cases, they are also invoked as justifications for imposing sanctions. It is not surprising that in the past the modern distinctions between law and religion were blurred, since, at times the two aspects of life were subsumed into one another. Scripture formed an important source of law and divine retribution was often invoked to ensure compliance with law

³⁶ *The Future of Belief: Theism in a World Come of Age* (p. 56).

inspired by scripture. Over time, however, the role of divinity as justifying sovereignty began to fade, and an increasing recognition of the independent status of each disclosed a disjunction between theology (divine legal sovereignty) and temporal norms (human legal sovereignty) which increasingly attained a secular character. In today's constitutional democracies, in contrast to monarchies, the relation between law and religion is complicated. On the one hand a country's constitution may explicitly adopt a secular, non-sectarian position. On the other, in a country religion may also constitute a significant presence in determining constitutional rights and be a source of personal and societal law. As a consequence, law and religion intersect at many different levels, and in different ways. At times they may work in conjunction, such as when religion is recognized as a source of law, or when the law upholds the religious rights of the individual. At other times they may work at cross-purposes, such as when civil law is used to redress social ills deriving from religious legal sanctions. In the latter case the result is a further challenge to philosophers and politicians. Much of the interface between religion and secular law involves the manner in which the legal system perceives or construes concepts associated with religion. These concepts include the idea of religious identity, religious freedom, secularism, minority rights and so on. The myriad ways in which religion and law intersect at a conceptual level defies easy classification or the convenient characterization of normative concepts. Indeed, normative concepts are also very difficult, if not impossible, to enumerate to the satisfaction of all concerned.

Laïcité: Proposed as Religious Concept

Laïcité, as a political-philosophical issue, arose within religious context. *Laïcité* ultimately involves the understanding of a transfer of power from a divine authority to human authority. As a point of interest, Leslie Dewart notes that the related, but separate, modern notion of secularity suffers from the same misunderstanding.

Moreover, since secularity clearly conflicts with the traditional Western European religious faith, secularity is often taken as a synonym for “irreligion,” or for “hostility to religion” by those who identify “religion” with those specific forms of it which suppose that there is a “higher” order of reality than that which we find in our world. In fact, “secularity” is, in a true sense, a *religious* concept, since it is a position taken, whether consciously calculated or inarticulately, regarding the human situation and its mortality.³⁷

As this understanding makes secularity a religious philosophical issue, it also makes *laïcité* a theological issue, which may be examined as an example of the historical philosophical tension between human freedom and God’s grace. As a result of examining the tension between human freedom and God’s grace two 20th Century values have contributed to the heightening of the consciousness of *laïcité* in the public mind. One is the increasing awareness in the modern Western secular mind of the political value

³⁷ *Hume’s Challenge* (p. 189) [Dewart’s italics].

of human freedom from religious governance. The other is that social intervention, individual and collective, through the evolutionary process continues to be effected such that popular philosophy, or as it is sometimes known, common sense, will eventually have no need of a religious explanation of experience, or which is the same, have no need for God's grace. Perhaps unwittingly so, Joe Holland hints of a move in this direction. He recognizes a "natural spirituality" as existing as a pre-requisite to a Catholic spirituality.

I attempt to classify distinct forms of spiritual energy. I do this not from the viewpoint of Christian theology but in terms of the underlying natural spiritual energy of the cultural community. According to Catholic theology, which has understood grace and nature to be complementary, and indeed all creation analogously to communicate its divine source, such an explanation of natural spirituality is a precondition to a formally Christian (in my case Catholic) spirituality.³⁸

³⁸ "The Cultural Vision of Pope John Paul II: Toward a Conservative/Liberal Postmodern Dialogue" in *Varieties of Postmodern Theology* (1989:98) eds. Griffin, D., Beardslee, W. & Holland, J. (State University of New York Press). Holland's view contrasts with the traditional Christian viewpoint of God's grace, or a religious explanation of human spirituality. As Gregory Baum has noted: "Thomas Aquinas teaches that divine grace is offered to man born into sin from the first moment of his conscious life. If man responds positively by orienting his life to the proper end his inherited sin is forgiven and he enters into the state of grace; if he rejects the offer and refuses to orient his life towards the proper end, as it is discernible by him at that age, he confirms the inherited sin by his own mortal sin. See *Summa Theol.*, I-II, 89, 6." *The Credibility of the Church Today: A Reply to Charles Davis* (1968:213, n. 35) Herder and Herder.

And according to Holland, a Catholic spirituality would build on a natural spirituality, even while healing the distortions of natural spirituality.

In this section, I contemplate the case for the advancement of *laïcité* in the public square. I will suggest that *laïcité* is, in fact, a religious philosophy particularly appropriate in forming governmental policy within contemporary Western societies. To accept the rationality of this philosophically political position, to my way of thinking, a degree of intellectual maturity and spiritual autonomy is required. Traditional common sense is not sufficient in today's scientific world view. More than inherited common philosophical sense is needed to recognize that the constraints of classical philosophy and the inherited religious traditions influencing modern politics are transcended within contemporary philosophical *laïcité*. The constraints of classical philosophy within religious belief are disclosed within a phenomenological approach to religion. In light of a contemporary consciousness that *laïcité* is not recognized today as a religious issue, is due to an unacknowledged fault within Christian theology and philosophy. Writing as a theological philosopher, Leslie Dewart has remarked, "we shall remember how it came about that Christian philosophy faltered, even as it began, when it re-interpreted what Plato and Aristotle had called *theologia*, (later to become known as 'metaphysics') in accordance with

Christian beliefs.”³⁹ Christian metaphysics continues to founder as it continues to embrace Hellenic philosophical beliefs.

In the 21st century it is acknowledged that religious belief is a product of human evolutionary intelligence, and as such it can have an effect upon public governmental policy. Traditionally, in Western societies, religions have influenced the values by which the population has governed itself. Given that religious feeling arises within the human being, religious feeling is not revelation. Thus, religious feeling is subject to human regulation and management within the political order. Non-human organisms are not expected to display any purpose or moral feelings within their societies. Historically, religious feeling appears to arise out of some form of distress perceived as real, individually or collectively. (Christian theologians teach that there is a lack of religion in heaven due to a lack of distress.) Since religious feeling is not revealed, but an exclusive human emotional experience, it is considered to specify *homo sapiens*.⁴⁰ In matters of contemporary governance, the

³⁹ *Hume’s Challenge* (p. 115).

⁴⁰ Religious feeling as specifying *homo sapiens* a new area of philosophical and psychological inquiry. The philosopher, Robert McCauley, has written concerning the view that religion is exclusive to *homo sapiens* that: “The pervasive assumption, of scholars of religion and of archaeologists alike, is that it is only modern humans who are religious. In the face of such intimate interactions among earlier members of *Homo sapiens* and Neanderthals and Denisovans, the question arises as to whether members of the latter two species exhibited any proto-religious proclivities. Were they susceptible to the various manifestations of informal religiosity—from convictions about superhuman agents with counter-intuitive properties (such as ancestors) to carrying out ritualized behaviors (such as ceremonial washings)—that abound

political philosophy of *homo sapiens* does not necessarily require the species to be religious, although historical criticism shows that government in Western civilized society has been religious.

Further, historical criticism shows that religion has progressed in the life of *homo sapiens* first as a subjective reality, then expressed as an objective social and cultural reality. For many in contemporary Western society, God, as a subjective reality, is not, of necessity, an active agent in the affairs of humanity, but is one of the many actors that appear in the arrangement of the human cosmos. When religion is subject to historical criticism generally, revelation is recognized as originating from a more inward appreciation of personal and ethical values. To be noted, however, is that the cultural phenomenon of popular, or common sense, Christendom has led to an understanding of revelation as anti-philosophical, (i.e., only faith is necessary in this life) thus impeding legitimate independent advancement in the life and governance of *homo sapiens*. Nowhere does Christianity claim a revealed system of political governance as is often presumed by the faithful. As a matter of fact, contemporary Christianity as an agency within governance is becoming more and

in every population of human beings to this day? And what features of the archaeological record would constitute evidence, one way or the other? If, for example, burial of the dead constitutes a tell-tale sign of religiosity, then what is to be made of the fact that the Neanderthals buried their dead, often within their compounds, sometimes with feathers or panther claws as adornment?" <https://www.psychologytoday.com/us/blog/why-religion-is-natural-and-science-is-not/201811/are-modern-human-beings-the-only-species> (McCauley's emphasis, accessed April 4, 2023).

more a façade of tradition. To be observed and noted is that the façade of religious tradition in the West serves the changing *political* interests in the governance of the State less and less in a multicultural context. That is to say that it is not in the interest of modern States to base their self-governing polity on the particular religious interests of their citizens. Also, the façade of tradition appears to be highly evident within the Christian churches themselves as they uncritically retain and conserve more and more of the inherited values of Medieval Christendom. Therefore, it is appropriate to suggest that a theory of *laïcité* for 21st century governmental policy, and beyond, for Western societies be formulated that will incorporate the criticism of citizens without denying the political rights of religiously-minded citizens. A religiously sponsored government with vested interests is likely to enact laws harmful to the common good, whereas a neutrally sponsored government without such interests is unlikely to do so.

As a philosophical concept, *laïcité* is a political value rather than a political right. A political right is something to which a citizen has a just claim. A political value is something held to be intrinsically desirable that belongs to the essential nature of human beings. In other words, humans have a *right* to be atheists. And by way of contrast most atheists *value* the regulation of religious freedom that does no harm to the common good. Political rights have their roots in public objectivity; community values have their roots in personal subjectivity. Both are conditioned by the historical development of

a political culture.

Laïcité, as public governmental policy, is still an obscure philosophical concept in the minds of many. Further clarification is needed. A quick glance at global political regimes shows that *laïcité*, as I intend it here, is not experienced *in concreto* in many States, but merely in theory, *in abstracto*, and often misunderstood at that. As I conceive it, *laïcité* is a simultaneous religious/moral and philosophical/political concept around which a fresh perspective on freedom of religion for 21st century in Western society may be envisioned. Like religion, whose existential purpose is to alleviate the experience of distress in an individual, *laïcité* can be envisioned as alleviating theological distress and controversy in the public life of society by removing the stress of religious favouritism within the governance of the State. *Laïcité*, as government policy, does not change anything concerning the essence of religious belief, but only regulates its presence in the public forum in a more equitable and peaceful manner. *Laïcité*, as a political concept, attempts to deal fairly and equally with all religions and as such is the will of the citizenry, exercised in concert with the religious will of its citizenry in seeking justice for all.

Laïcité increases the acceptance of the legitimate and constructive presence of divine beliefs in the personal affairs of citizens and in the public policy proper to the 21st century relationship between the powers of divine authority and powers of human self-government.

Further, *laïcité*, is an equitable public governmental policy, which transcends the inordinate religious influence, thus freeing religion from an inherited duty to civil governance, as the citizenry comes of age. *Laïcité* places religion *within* the culture in contradistinction to regulating religion as the culture. In short, phenomenologically there is more to a culture than religion upon which to base any form of governance. Upon personal reflection and subsequently within public consciousness *laïcité* readily acknowledges the existence of diverse religious cultures among *homo sapiens*. As a religious, political and philosophical concept, *laïcité* allows for the legitimacy of proper expression of all religions from the polytheism of non-Western cultures to the monotheistic understanding inherited from the tradition of the Hebrews. Barring, of course, any subversive attempt towards the State.

Laïcité, has religious antecedents which prepared it and conditioned it as a philosophical and political concept. *Laïcité* frees religion from the necessity of governing civil citizenry come of age. Thus, religion need no longer be classified as the opiate of the people. Religion can then function as a principle of piety and salvation appropriate to the sociological *milieu* of the faithful. In this sense, *laïcité* is not a revolutionary idea with the intent of abolishing religious values or discriminating negatively against religious individuals. It is a discriminatingly positive concept (similar to dehellenization) which is able to function as a fair norm of governance for the 21st century and beyond. *Laïcité* is not a secular doctrine. It is a religious and

political philosophical doctrine that has evolved out of the *ancien régime* of Western social philosophy and discloses a different spirit in the process of establishing a new societal existence. *Laïcité* is the political and philosophical product of various political and other societal movements, that ever since the end of the Middle Ages, have been enfranchising citizens and rendering them more responsible for their destiny. Western governments may make different uses of the notion of *laïcité* in the future, but they will not be able to dispense with it since it appears in all maturing cultures in accordance with modern scientific insights regarding human nature. Properly understood there is no attempt in the contemporary philosophical concept of *laïcité* to absorb religion into an irreligious or secular political culture. The intent of contemporary *laïcité* is to give religious values their proper forum in the authoritative life of the State.

Laïcité, as a general philosophy, will never cease to be primarily subjective in formulating its purpose. It can never be rendered objectively complete, requiring no additional modifications as the citizenry evolve in their religious thinking. That is, as contemporary humans determine the cultural significance of religion; they also determine the political value of *laïcité*. Thus, whereas religion is a phenomenological experience, *laïcité* is a philosophical/political and religious ethic that directs the political formation of public policy within a culture. As a philosophical/political ethic *laïcité* is not a religion. It has no creed. And those who consider *laïcité* as

anti-religious misunderstand it.

Laïcité: Its Varying Perspectives ⁴¹

The varying perspectives of *laïcité* give reason to initiate a re-assessment of *laïcité* by philosophers and theologians, particularly within the Anglophone academic world. Often the term is understood by Anglophones not quite as exactly or accurately as its French advocates intend. The translated texts used here are taken from the official French Government website which is supportive of my philosophical perspective. That is, I understand *laïcité* as a positive concept, that when properly understood, is not an adversary of religious belief. Further, *laïcité* is an evolving concept, not a static one, and it is philosophically contingent upon a degree of societal consciousness on the part of citizens of the place of religion in society.

⁴¹ Some Catholic readers may be familiar with Giuseppe Alberigo's understanding of the term as outlined in <<Facteurs de laïcité au Concile Vatican II>> in *Revue des Sciences Religieuses*, tome 74, fas. 2, 2000, in which he writes in a footnote: "Ce mot est utilisé dans le sens du processus de 'décléricalisation' à l'intérieur de l'Église et non pas pour indiquer une orientation pour l'autonomie de l'État vis-à-vis de l'Église." [Translation: This word is used in the sense of meaning the process of 'declericalization' within the Church and not to indicate an understanding of the autonomy of the State vis-à-vis the Church.] My approach is the opposite. I accept the term in a positive sense as used in the current political discussions indicating the societal phenomenon of the separation of Church and State. *Laïcité*, formulated by the Council, indicated a different understanding than the one evident in much modern political usage. The Council, according to Alberigo, recognized *laïcité* as indicating one element in the Church's internal *aggiornamento* with respect to the participation of the laity in ecclesial governance. The term evolved from "laicism" as introduced by Pope Pius XI in the encyclical *Quas primus* (1925).

In this section I present my understanding of the phenomenon of *laïcité* as it has evolved up to 2021. Throughout this section I retain the French term because, to date, I have not found an English equivalent that adequately reflects the various and nuanced meanings of the French perspective on the matter. However, the English term *secularity*, understood as a positive concept, serves as the best option. To my way of thinking, Albert Keller gives a very satisfactory description upon which the phenomenological philosopher can contemplate. He suggests that *laïcité* (secularity) may be understood as the whole of human life ceasing “to be determined by religion. The result, secularity, then means independence and adulthood with regard to religion.”⁴² Independence and adulthood, it should go without saying, are key words in Keller’s understanding. *Laïcité*, as a philosophical phenomenon, cannot be adequately understood without knowing that it is a notion that has evolved out of a theological context as to the role of religion in governmental policy.

Thus, further, *laïcité*, as a modern political phenomenon, cannot be understood without a critical evaluation of the the evolution of concepts of “Church and State,” and the notions of “Religion and World,” as introduced at Vatican II.⁴³ The former concepts concern

⁴² s. v. ‘Secularization’ in *The Encyclopedia of Theology* (1975:1554).

⁴³ Vatican II expanded the Church’s political presence as a human value beyond the visible structures of the ecclesiastical corporation. Not the ancient, nor the medieval, but the modern technically scientific world is to benefit from the Church’s *Pastoral Constitution on the Church in the Modern*

the political autonomy of the State vis-à-vis the Church, whereas the latter notions apply to contemporary moral authority of religion in the world. In the current era, the philosophical contemplation of many phenomenologists has shifted focus from politics to religious morality in which modern *laïcité* has its roots. Within this shift, *laïcité*, as a phenomenon, cannot be examined to see what it is “in itself.” *Laïcité* needs to be observed in the matrix of religious life in which it is disclosed. Like all moral phenomena *laïcité* needs a concrete context to establish its reality. Just as the reality of justice can only be seen in the actions of a just person and the reality of truth only seen in the actions of a truthful person, etc. *Laïcité*, like justice and truth, is dependent upon human experience which may be interpreted phenomenologically.

From a phenomenological perspective, *laïcité* discloses an attempt at reconciliation between individual freedoms of religion (which are subjective) and the collective religious values of a republic (which are objective). This notion was born within the political stages of the French Revolution to relieve the tensions between Church and State. And it is easy to understand why the notion of *laïcité* could have

World. The astute phenomenological philosopher will, as well, contemplate the Constitution’s benefits for a postmodern and posthuman world. It is worth noting that in theology, for the moment at least, posthuman does not carry the negative connotation that postmodern does. David Griffin writes: “The rapid spread of the term *postmodernism* in recent years witnesses to a growing dissatisfaction with modernity and to an increasing sense that the modern age not only had a beginning but can have an end as well” *Varieties of Postmodern Theology* (p. xi).

arisen only within a Christian monarchy. The rejection of the Western political concept of the Divine Right of Kings is an historical confirmation of *laïcité* as a doctrine of republican governmental policy. The Divine Right of Kings asserted that the monarch was subject to no earthly authority, but derived the right to rule directly from the will of God, and thus was not subject to the will of the people, the aristocracy, or any other estate in the realm, including the church.⁴⁴ Interpreted strictly, the Divine Right of Kings implied that any attempt to depose the monarchy, or restrict its powers, was contrary to the will of God and could constitute treason. *Laïcité*, in its current understanding as enacted by French legislation, cannot be incorporated into the essence of a monarchical or hierarchical system of thought since it rejects the religious character of the State in favour of the neutrality of the State. *Laïcité* is, without doubt, a republican concept that allows monarchy and religion only a popular celebratory status outside the apparatus of State governance. Clearly, this celebratory status originated with, and is accepted by, the will of the people.

⁴⁴ The Divine Right of Kings has its origins in the Estates-General convened to discuss conflicts between the French King Philip IV and Pope Boniface. It was convened in 1308 and consisted of three Estates. The First Estate consisted of Roman Catholic clergy. The Second Estate represented the nobility. The Third Estate represented the majority of the French population made up of independently wealthy subjects, craftsman and the peasantry. The Fourth Estate is the modern term given to the “press,” and recently expanded to include legacy and social media due to their unofficial but influential role in politics and in the public square. During the French Revolution of 1789, the Third Estate convened a body politic, i.e., the National Assembly that fought to eliminate the influence in government of the privileged classes of the first and second Estates.

Laïcité is, at present, applicable only to public officials authoritatively representing the State (a necessary objective political reality in the modern context) and who are in direct contact with the public. The nation (an optional subjective reality in the modern context) is free to be a religious entity, unless such “freedom” undermines cohesion and harmony within the State.⁴⁵ Otherwise, *laïcité* does not apply to a nation’s non-administrative culture. Further, *laïcité* as it applies to public officials in the State and *laïcité* where it applies in the realm of national culture may be distinguished as two different philosophical realities. *Laïcité* in the realm of national culture, usually where Christianity dominates, means that philosophers may abandon the idea of a Hellenic religious universe such as Thales, a pre-Socratic philosopher (circa 585 B.C.) held, and conceived the cosmos phenomenologically as a particular environment of human activity.⁴⁶ The abandonment of a religious

⁴⁵ With regard to the presence of the State, it is worth calling to mind Lord Acton’s understanding of the origins of the French Nation. “The France of history fell together with the French State, which was the growth of centuries. The old sovereignty was destroyed. The local authorities were looked upon with aversion and alarm. The new central authority needed to be established on a new principle of unity. The state of nature, which was the ideal of society, was made the basis of the nation; descent was put in the place of tradition, and the French people was regarded as a physical product: an ethnological, not historic, unit. It was assumed that a unity existed separate from the representation and the government, wholly independent of the past, and capable at any moment of expressing or changing its mind.” *Essays on Freedom and Power* (p. 173).

⁴⁶ The idea of Thales that “all things are full of gods” ... meant that “the divinities are not actually found in peculiar or sacred places or times, as mythology. ... The divinities lie immediately before us, in things themselves.” Leslie Dewart (1969:54) *The Foundations of Belief*.

universe is held by many contemporary philosophers to be a positive choice and insight born of an evolutionary development of human consciousness and existential philosophy. However, in the sense of rejecting or deleting from consciousness a religious universe and subsequently a religious State, *laïcité* is considered by many contemporary philosophers and politicians as a negative concept. Yet, properly understood, I maintain that *laïcité* is a positive notion appropriate to the evolutionary and intellectual maturing of *homo sapiens* as a species. Concerning the Christian view of secularization, I once more follow Albert Keller's observation that "the true relationship between the Christian notion of God and a divinized world is precisely the opposite [of what is traditionally understood]: 'to Christianize the world means to secularize it.'"⁴⁷

That is to say that secularization is intended to give humanity its proper authority, the ability to exercise influence or authority within creation, which I maintain, is the intended meaning of "dominion" in Genesis 1:26. As I conceive it, *laïcité*, is an evolving notion of a contemporary *political* theology historically arising out of a *pastoral* theology that came to formal religious consciousness, perhaps unwittingly so, with the Fathers of the Second Vatican Council. As political theology one might say that *laïcité* is the practical solution that modern Europe generated in order not to repeat its religious past and to escape civil wars over religion. Originating within

⁴⁷ s. v. 'Secularization' in *The Encyclopedia of Theology* (1975:1559).

Christianity the notion of *laïcité* is intended as a peaceful measure to prevent national civil strife over religious belief. As well, it is a theological topic that continues to evolve around the accepted classical notions of the power of the *Sacerdotium* and *Imperium*. It is a perspective in contrast to the modern democratic and republican powers (freedoms) of the Church vis-à-vis the State. As a Christian political theology *laïcité* is a doctrine concerning the independence and adulthood of the faithful in the presence of God. Also, a pastoral theology *laïcité* may be understood as an internal ecclesial freedom encouraging an authentic secularity within the world, yet not encouraging nor espousing secularism, which is its false counterpart. Thus, *laïcité* as authentic secularity, exercises jurisdiction only over those who in civil governance authoritatively influence public policy, formally, informally or causally. Historically, David Griffin notes that “late modern theology gave up its claim to universality and thereby its claim to provide a *basis for public policy* in an increasingly pluralistic society.”⁴⁸ *Laïcité*, in a pluralistic society, is a notion of political governance justifiably applicable to, 1) public officials, employees and volunteers who are in direct contact with the public, 2) social professionals who intervene within the public space, 3) adjunct professionals who have a relationship of service to the population and elected officials. *Laïcité* makes no claim of jurisdiction over one’s religious convictions or lack of religious convictions in the celebratory

⁴⁸ *Varieties of Postmodern Theology* (p. 2) [my italics].

culture of the nation.

Recall that *laïcité*, as a philosophical notion, originated as a negative concept. The negative aspect developed within an earlier principle of the separation of Church and State in France that eventually evolved into their reciprocal independence which became enshrined in law on December 9, 1905. At that time, the French people, as a political entity, considered themselves to be an indivisible, secular, democratic and social Republic (cf. article 1 of the Constitution of the Fifth Republic). Yet, as an ethnic identity, or nation, the French people also considered themselves to be a religious entity existing independently of the new Republic. That is, the Nation and the State were not conceived as phenomenologically co-terminus entities. The philosophical question of *laïcité*, as an issue of religion *vs* as an issue of secularity, both within and without France, has been studied regularly since the end of 1980. In French society, as within various societies throughout the global, each version of *laïcité* remains a controversial subject that is often mistakenly understood or misinterpreted. To my mind it would be of assistance to view each version of *laïcité* from a phenomenological “both/and” perspective and not from a classical “either/or” perspective.

Thus, in light of the above many questions arise for public officials in particular and citizens in general, on what is to be allowed or not to be allowed, by the principle of fundamental freedoms in religion, in respect of the public order, and in the neutrality of different

societal contexts. With absolute respect for the individual freedom of conscience, *laïcité* is the guarantor of a French-style of society of “living together” whose concept is recognized by the European Court of Human Rights. The French-style of social living, politically and theologically, appears to be evolving towards a universal acceptance, at least within the Western philosophical perspective.

Laïcité: A Particular Republican Value in Contemporary France

In France, *laïcité* guarantees freedom of conscience. From this derives the freedom to practice one’s beliefs or convictions while respecting the lawful conditions of public order. *Laïcité* implies the neutrality of the State and recognizes the equality of all before the law without favouring, or supporting, any religion or belief system. *Laïcité* guarantees the believer’s right to freedom of expression of their beliefs or convictions, and the right to non-believers to profess nothing. It ensures the right for an individual to be religious, to be an atheist (but not an anti-theist) or agnostic, and to convert from one religion to another. It guarantees the free exercise of religious public worship. With respect to the freedom of religion *laïcité* means that no one can be forced by the State to embrace theological dogmas or religious doctrines. In other words, *laïcité* repudiates the Constantinian notion of a temporal political power intervening in religious affairs. *Laïcité* thus recognizes the political order as founded solely on the sovereignty of the people as the citizens of the State. The sovereignty of the citizens of the State legislates legal equality of all before civil governance and the administration of the

Public Service. That is to say that the sovereignty of the people is not determined by divine right. To reject the sovereignty of the citizenry is to approve of and retain, but in a dispersed context, the authority characteristic and reminiscent of the *ancien régime*.

Laïcité is not merely one philosophical opinion among others, but rather, it is the freedom to have a philosophical opinion of one's own without religious interference. In law, then, *laïcité* is not a philosophical conviction subject to academic and cultural contingency, but has been made into an objective norm, which permits all religious opinions that are not opposed to public harmony and order within the State. As a cultural phenomenon, *laïcité* is the glue of a united France, as advocated by the former Prime Minister, Mr. Jean Castex. But it is not a view shared by all the politicians in France. However, *laïcité* being a living principle of law (jurisprudence) must adapt in order to retain all its original political significance. Recently, as part of the bill consolidating the principles of the Republic, which President Macron has called for, the parliamentarians, as representatives of the Nation, have had many debates on the changes to be made to the legal principle of *laïcité*. In 2021 the French Government enacted legislation to further protect the balances enshrined in the French model of *laïcité*, which is arguably unique in the world, as it reconciles individual freedoms with the cohesion and unity of the Republic.

Currently, the government is up-dating and re-enacting the

principles of *laïcité* inherited from the 1905 declaration by adapting them to the challenges of France's contemporary society. Upon completion, the new declaration will ensure that the principle of *laïcité* is respected and promoted regularly by all those who are its officers. That is to say by the officers of all administrations, public services and organizations that are responsible to the government. No spirit contrary to the Republic is to be tolerated in the re-enactment of the principle of *laïcité*. In the re-enactment, freedom of worship will be properly re-affirmed with the intent of achieving harmony and cohesiveness in the public order of the Republic. Thus, religions will be able to manage their legal and financial responsibilities for optimum benefit of their communities.

The current re-enactment by the government suggests to me that a shift in the overall philosophical/political understanding of the 1905 notion of *laïcité* is taking place. The French government's re-enactment focuses on several points of investigation overseen by the general secretariat of the Interministerial Committee, a newly created body within the Ministry of the Interior. It provides up-dated support systems to all those administrators and public officials who are required to implement these measures. Clearly, then, in the mind of the current French government *laïcité* is not a fixed ideological, or legal concept immune to evolutionary forces. Rather, French *laïcité* constitutes a dynamic and fluid approach to religion in the modern Republic that reflects a phenomenological philosophy rather than a classical one that continues to support the *ancien*

régime or its contemporary equivalent. It is highly likely that political administrations outside France will follow suit.

With Anglophone philosophers in mind and for the sake of precision of thought, I include the following French text which is a summary of the points covered throughout this section which may not be expressed in the English text as precisely as in the French text.

La France est une République indivisible, laïque, démocratique et sociale. Elle assure l'égalité devant la loi de tous les citoyens sans distinction d'origine, de race ou de religion. Elle garantit des droits égaux aux hommes et aux femmes et respecte toutes les croyances. Nul ne doit être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établi par la loi. La liberté de religion ou de conviction ne rencontre que des limites nécessaires au respect du pluralisme religieux, à la protection des droits et libertés d'autrui, aux impératifs de l'ordre public et au maintien de la paix civile. La République assure la liberté de conscience et garantit le libre exercice des cultes dans les conditions fixées par la loi du 9 décembre 1905. Au titre de la laïcité, la République ne reconnaît, ne salarie ni ne subventionne aucun culte, ce qui implique qu'aucune religion ou conviction puisse être, ni privilégiée ni discriminée. La laïcité repose sur la séparation des Églises et de l'État, ce qui implique que les religions ne s'immiscent pas dans le fonctionnement des pouvoirs publics et que les pouvoirs publics ne s'ingèrent pas dans le fonctionnement des

institutions religieuses. Les élus de la République ont la charge de faire respecter la laïcité. Elle suppose un engagement fort et constant de la puissance publique pour assurer sa pédagogie et sa promotion. La laïcité, parce qu'elle est une des conditions fondamentales du vivre ensemble, requiert une lutte constante contre toutes les discriminations. La puissance publique doit garantir à tous et sur l'ensemble du territoire la possibilité d'accéder à des services publics, où s'impose le respect du principe de neutralité, à côté d'autres services d'intérêt général. Tout agent d'une administration publique, ou du gestionnaire d'un service public a un devoir de stricte neutralité. Il se doit d'adopter un comportement impartial vis à vis des usagers du service public et de ses collègues de travail. Les manquements à ces règles doivent être relevés et peuvent faire l'objet de sanctions. La République laïque garantit l'exercice de tous les droits civils quelles que soient les convictions ou les croyances de chacun. Aucune religion ne peut imposer ses prescriptions à la République. Aucun principe religieux ne peut conduire à ne pas respecter la loi.

Laïcité: Viewed from a Phenomenological Perspective as a Cultural Phenomenon

What does it mean to assign oneself a secular identity to describe way of being human in the world *sans perspective religieuse*, when the a way of being human in the world is inherently religious? This is the philosophical question. Religious identity, from a phenomenological perspective, refers less to the set of existential

beliefs a person holds (theology) and more about the observable aspects of a person's behaviour (sociology). The phenomenological concept of secular identity, like religious identity, functions as a positive and cohesive agency in determining individual and group social values in the world. Observing this agency leads phenomenological philosophers to rethink the process of human experience, expressed in a philosophy of mind. In other words, phenomenology is a philosophy of mind, which is a philosophy of the interpretation of experience. The notion of secular identity can help to offset the experiences of an excessive and exclusive society inordinately influenced by religion. Secular identity, arising from an individual's orientation towards the world, is a contingent, variable, and dynamic status and as its realization evolves, discloses the hidden and subtle motives of a secular life which is the obverse of a religious life.

To assign oneself a secular identity is to accept responsibility in evaluating experiences that are highly individual, lacking transcendence, and potentially universal. That is, any human can choose to live non-religiously and appear to do so. Phenomenologists hold human experience to be inescapable in this life. But there are many personal experiences in this life, not simply one experience, which overlap and disclose complex interrelationships. In the experience of complex human relationships, one thing that is clear is that secular identity is an historically acquired identity, not a natural one. Humans are not

naturally irreligious, but are naturally religious with each nation believing its gods culturally superior to other nations. The concept of a nation without gods, I suggest, is an historical fabrication originating with the notion of the sovereignty of the French citizenry. The French Revolution attempted to develop a new history with the dissolution of the Estates General (*ancien régime*) and the establishment of a State which did not incorporate the gods of any nation. The notion of assigning oneself a secular identity within the new State emerged as a possible cultural solution to the perpetual strife over conflicting religious beliefs and the unjust political advantages which favoured one particular religion over any other. In this sense, secular identity, as the obverse of religious identity, evolved out of the Western experience of the faithful abandoning involvement in a variety of religious power politics. The problem was not solved, however; religious power politics simply appeared under the new guise of secular power politics.

The lived experience of secular identity by a significant portion of Western society has produced some large-scale societal changes, as well as introducing some particular state legislative policies. Numerous scholars, particularly sociologists, social psychologists, political scientists, economists, and historians, have spent much time studying secular identity of Western culture. And, as a result, to assign oneself a secular identity has become a desirable goal for many individuals as an option in life. Secular identity remains an important concern and preoccupation for many state and

ecclesiastical regulatory bodies. Prior to the notion of secular identity, however, there is the distinct first-person consciousness, or personal experience, of a religious identity as a constituent of the social environment. Among the various personal religious experiences, philosophers discern similarities, differences and novelties. One novelty among religious individuals is the appearance of a secular attitude. In distinguishing these similarities, differences and novelties, the work of social psychologists has been very helpful in disclosing varying patterns of secular identity ranging through atheism, anti-theism and agnosticism in formerly religious individuals. That is, individuals display degrees of secular identity through agnostic patterns (i.e., allowing for the possibility of God's existence) through atheistic, anti-theistic and humanist patterns of living. Secular identity can also disclose not only how humans live in their world without religion, but also how they may be classified as personal agents in fashioning their world, negatively or positively. Whether liberal or conservative, urban or rural, poor or middle class, secular identity may discredit (incorrectly so) certain alternatives in life, i.e., living life religiously. To overcome secular arrogance and religious ignorance today requires more effort than it did in times past, given the large and varied population in urban areas, and the high degree of information overload in contemporary Western experience.

Today's secular identity discloses new practices and takes new forms, and cannot maintain the anti-religious stance of former times.

Secular identity, just as all identity formulations, is multidimensional and dynamic and in constant process of reproduction, regeneration, and transformation to more updated forms. Upon philosophical reflection, the assignment of a secular identity does not have to be the end result of a process of deliberation for or against religion. The retention of a religious identity, or its cultural equivalent, may be the result after such deliberation. In the temporal order of earthly priorities, the acquisition, or acceptance of a religious identity, must logically precede the assignment of a secular identity. Human history shows that secularity is a post-religious development. *Homo sapiens* is not a naturally secular being. The process of establishing secular identity is similar to that of an atheist who needs the presence of God, or gods, in which not to believe. Further, the assignment of a secular identity is not an arbitrary act on the part of the individual, but is an existentially and thoroughly thought out decision.

Nor is secular identity, in any sense, a belief system. It expresses an overall orientation or attitude to the world that organizes and unifies an individual's experience in the world without taking into consideration religious values. The phenomenological appearance of secular identity requires knowledge of the variety of optional personal, societal and cultural values available to human beings. In actuality, the assignment of a secular identity always involves the individual's memories of past experiences and how these affect the individual's orientation within the present world and orientation

towards a future world. Given this understanding secular identity has no independent nor positive ontological status. As traditionally understood it is a negation of a positive experience in life. It does not denote that which exists outside of culture and subsequently imported, but precisely that which is within culture and has been rejected. Religious rejection notwithstanding, however, secular identity is a positive human value when understood in terms of a contemporary *laïcité*. Secular identity simply constitutes an option for human behaviour vis-à-vis religious experience, which, however, is often taken for granted without critique or questioning. The self-assignment of a secular identity by an individual is indicative of the human and rational ability to uniquely define non-religious existential cultural values, such as humanism. The self-assignment of a secular identity is a function reserved to *homo sapiens* that makes the individual free to re-invent itself without any religious historical encumbrance. In the contemporary notion of *laïcité* the State ensures the ability of individuals to acquire a secular identity, without interference from religion, through the agencies of political and economic opportunities appropriately available within their cultural context.

The notions of a republican democracy and national cohesiveness as characteristics of secular identity is the result of the particular era in European history, that is, the history of France. Some philosophers, particularly within the Anglophone tradition, doubt that *laïcité* will ever succeed as a significant political and cultural phenomenon

within the history of *homo sapiens*. However, the secular State has never set itself the agenda, until recently, of creating a nation that could realize the unity and stability of various groups with disparate religious experiences and histories. The agenda of the State, particularly evident in France, is harmony and cohesion within governance of the Nation while encouraging the optional self-assignment of a secular identity by its citizens. In the French understanding of governance, *liberté, égalité, fraternité*, there is no longer the possibility of a secular identity, alongside a religious one, there will no longer be a republican democracy that has something unique to offer the world. Rather, failing the existence of a secular option, Christendom (or its equivalent in pagan experience) will have been restored in some fashion and the world will be once more in an imbalance due to religious strife.

Laïcité: Within an Evolving Political Theology

From a phenomenological perspective, *laïcité* may be consciously envisioned as a component of an evolving *Political Theology*. What then, I ask, is antecedent to contemporary *laïcité* in the French political experience? The 1905 French law separating the Church and the State is over a hundred years old. The dynamic principle of *laïcité* that the law defined there, despite the term not being mentioned in the text, is unique in the world and is an integral part of France's contemporary political apparatus. This principle is, however, neither protected by the fact that it is a legality, nor by its relatively old age. Indeed, the principle is controversial both, 1) at

the national level, where it is subject to contradictory debates, and 2) at the international level, where France is often accused of having an intolerant and discriminatory system of the separation of Church and State.

Laïcité is the product of a long evolution of the relationship between the Church and the State. As Rome's authority was universal in Western Europe, to all intents and purposes up to the Reformation, France asserted its particular authority as it broke away from the Papacy with the rise of the Capetian monarchy. From the beginning of the 14th century, Philip IV of France opposed the Pope's interference in his kingdom's affairs. He inaugurated a policy of autonomy, which reduced the influence of the ecclesiastical establishment in political affairs and enacted civil legislation and civil jurisdictions that did not recognize any superior authority. There followed the Gallican movement which reached its peak under Louis XIV with the Declaration of the Clergy of France of 1682. This movement favoured the independence of the king in temporal and civil affairs and supported the superiority of an ecumenical council over the Pope in religious affairs. The Church's influence was implicitly affirmed yet limited to a spiritual representation outside of temporal polity. The Church's influence was enshrined in national patrimony as secondary to that of the political power which took precedence over religious authority in the public forum. The Enlightenment, as a French phenomenon, took advantage of this principle of political power over religious

authority during the Revolution and promoted its acceptance within the French Republic. Today, the French Republic continues to work towards liberating religious organizations from State regulation and strives for the autonomous freedom of both governance and religion in the public forum. If the ministers of religious affairs have public authority and government support, they must remain under the government's authority, to which they are obliged to swear their loyalty. In the current Republic ministers of autonomous religious bodies with no public authority and government support are not subject to this particular legislation.

Avoidance of both the interference in, and the discrimination of, by either authority in the other's jurisdiction was the guiding principle of the 1905 law. Article 2 of that law dictated (as a negative notion) that "the Republic neither recognizes nor employs nor subsidizes cults", and it guaranteed (as a positive notion) the freedom of particular religious organizations, as long as they did not violate the public order. The State abolished the earlier particular rights granted to institutions or religious congregations, and confined religion to a personal and private subjectivity. However, the notion of religious personal and private subjectivity did not mean, and did not intend, that there be no religious activity in the public sphere of the Nation. The State only intended to recognize the right of choice by individuals as citizens, irrespective of their social background, whether it be religious, non-religious or ethnic. In short, the State applied a phenomenological *epoche* or "bracketing out" of certain

human characteristics in defining its notion of citizenship. Religious conviction, no religious conviction, nor particular ethnicity was required for citizenship. However, despite the fact that the State desired politically to neutralize religious communities within its borders (in order to prevent divisive social encounters) it did not seek to neutralize humanitarian community within the public sphere of the Nation. Yet, the 1905 law was not devoid of its weaknesses. The State acted, inspired by an optimistic ideology, as if its future depended on the emancipation of religion from the State. But to the contrary, this early *laicism*, wherein religion had no influence on the citizenry, caused the loss of a cohesive cultural identity in France. Further, the two World Wars, each in its own way, disrupted the established post-revolutionary political apparatus of France. Thus, the Fifth Republic, like its predecessors, opted for a “healing” policy of religious tolerance during the years from 1945 to 1975.⁴⁹

The conception of *laïcité* as a shared and accepted *modus vivendi* was sociologically destabilized twice in France from the decade of the 1980s onwards: the first being the diversification of faiths caused by migration to France, and the second being the “return to God”

⁴⁹ J. Middleton Murry, an early 20th century literary critic, suggested that a problem for modern philosophers was the understanding of the new Western world that followed the Great War of 1914-1918. Optimistically, however, he noted that “it is really not a new world, but the old one clearly seen for the first time. But it is a new world for them in which the lines of cleavage were entirely different from what they had seemed to be; a world which seemed cold and alien and hostile, yet afterwards appeared to have at least the attraction that discoveries might be made in it and new lessons learned.” *The Evolution of an Intellectual* (1927:171) Jonathan Cape.

movement in politics that was spreading globally. This unsettled the French Republican elites like nothing had done before. For them rethinking the place of religion in the Republic, while at the same time retaining its founding principles, became a matter of urgency. Confronted with the rise of extremisms, in particular radical Islam, and with increasing communitarian political claims, the Republic enacted stern laws. Religious symbols at schools were restricted in 2004, and concealing one's face in public spaces was forbidden in 2010, and as well as Nativity scenes were proscribed in public buildings in 2016.

Both the Republic and the Church remain part of the national identity of France. But they are not exempt from criticisms given their respective positions. In France, the political milieu and the media coverage towards a strict version of *laïcité*, (such as is evident in pre-Vatican II theology), and an attitude towards an “open” version of *laïcité*, (such as is evident in post-Vatican II theology), are signs of the times. It is reasonable to expect that there will be a similar polarization towards religion on a global scale with the expansion of Westernization. Since quarrels over *laïcité* go beyond the country's borders, France is regularly accused of initiating and exporting religious intolerance by many in the international community. However, in my interpretation, on a global scale it is becoming evident that political debate has disclosed two differing perspectives which illustrate the deep cultural differences between a strict *laïcité* (characteristic of the current French version of *laïcité*)

and an “open” *laïcité* (characteristic of Anglo-Saxon community-mindedness).

Thus, contemporary *laïcité*, in its strict or open form, is not readily, nor easily, understood outside of France. Often neglected in the debate over *laïcité* is the theological antecedent to a secular politics. Since contemporary *laïcité* transcends its French political context, it may be understood as a global political values phenomenon. Contemporary *laïcité* would be misunderstood if it “bracketed” out entirely any form of religion. The social fact is that *laïcité* is tantamount to a non-revealed political/theological value system generated within a maturing political consciousness. I suggest, philosophically, that accepting the notion of *laïcité* and its proper relation to religion in contemporary society, is the next step in understanding the evolution of human political and theological values.

In light of the shift in the theology of Vatican II from “Church and State” to “Church and World,” as Karl Rahner has acknowledged, a re-fashioning of Christian cultures appears to be necessary in the minds of many of the faithful and religious devotees.⁵⁰ Indeed, such a change is taking place and is profoundly altering the philosophical understanding of the unity of humanity in order to live a “life of reason,” not rationalism. Reason alone, as inherited from the

⁵⁰ cf. ‘Church and World’ in *The Encyclopedia of Theology*.

Hellenic philosophical tradition, is no longer sufficient to define human specificity: that is, to identify a human as possessing “a mind conscious of a conflict in its natural loyalties, of an effort to achieve an inner harmony and consistency.”⁵¹ *Laïcité* challenges the classical principle of innate reason as the ultimate definition of contemporary humanity and, instead, advances an understanding of a conscious life of reason as philosophical evidence of human specificity. In other words *laïcité* may be understood phenomenologically as arising within a “philosophy of mind.” As a contemporary political/theological phenomenon, *laïcité* critiques the inherited reasons from the *ancient régime* for recognizing any religion as superior to the State. That is, the globalization of Western culture and philosophical attitude is re-fashioning non-Western cultures to favour modern republican and individual rights over historical monarchical and aristocratic rights. Accepting the above phenomenological perspective, then, I maintain that *laïcité*, realized as a globalized political/theological theory and praxis, is able to guarantee freedom and equality of all religions in the world.⁵²

⁵¹ Park, Robert (1961:945) “Cultural Conflict and the Marginal Man” in *The Theories of Society* Vol. 2.

⁵² In preparing this section I have relied on the article, “*Laïcité*: Why French Secularism is So Hard to Grasp,” published by ‘Institut Montaigne’ (Articles – 11 December, 2017) which is a nonprofit, independent organization based in Paris, France. The author, Dr. Anastasia Colosimo is a professor of political theology at ‘Sciences Po,’ Paris. Both organizations are accessible via the Internet.

ADDENDA

Number 1.

DECLARATION FOR *LAÏCITÉ**

Translation of the Declaration for *Laïcité* (Paris, September 22, 2016) provided by the *Observatoire de la laïcité*.

*“*Laïcité*” is usually translated by “secularism;” in view, however, of its particular status in France, as a cardinal principle enshrined in the Constitution, guaranteeing the same rights and duties to believers and non-believers alike, *Laïcité* will be retained in this Declaration.⁵³

Laïcité is our common good. It must be promoted and defended. It must unite us, not divide us. In the present times, when there is much questioning and also a tendency to be over-zealous, it is the responsibility of the *Observatoire de la laïcité* to recall what is meant by *Laïcité*, as defined in the Constitution of the Republic and eculariz by the law of December 9, 1905. *Laïcité* is first the

⁵³ Hopefully, the astute reader will have realized that the debate in France over contemporary *laïcité* has moved passed the debate over *secularization* and *secularism*, which was popular shortly after Vatican II. Charles Davis’s words are instructive here. “In my book, *God’s Grace in History*, I gave reasons for welcoming secularization when understood as a cultural process distinct from secularism. Christians should cease to lament Christendom and instead regard it as a transitory and now past stage in the history of Christianity. The welding of the Church and society into the single sacred, politico-ecclesiastical order of Christendom is historically explicable and had advantages at the time. But it also had considerable disadvantages and should not be taken as the normative form of Christian presence in the world. Secularization, with its social, political and general cultural consequences, represents an advance of human consciousness. It has brought a differentiation of the secular and the sacred, with a healthy and fruitful acknowledgement of the autonomy of the secular. Admittedly, owing to the intermingling of secularism with the process, it has in fact done this in an ambiguous way. But the positive value of secularization should be recognized, unless Christians are going vainly to attempt to force men back into an earlier stage of social development.” *A Question of Conscience* (1967:182-83) Hodder & Stoughton.

freedom of conscience, the freedom to believe or not to believe. The freedom to believe implies the freedom to practice a religion, in private or in public, as long as the manifestation of the practice does not disturb the peace.

In the public interest, there are limits set to the freedom to manifest one's convictions. To start with, it is forbidden for public servants, and all those who have public service duties, to display their own religious faith: public service must be neutral, so that users are treated equally, regardless of their convictions. In 2004, in order to protect schoolchildren against any form of pressure, the ostensible manifestation of a religion through insignia or dress was banned in all state-run primary and secondary schools. In 2010, for public security reasons, concealing one's face in public was prohibited (burka, niqab, hoods, helmets, etc.) It is possible to impose limits, but freedom must remain the basic principle. General prohibition of any outward religious sign in public or in private collective areas would not strengthen *Laïcité*, but would denature it, by turning a freedom into a prohibition.

***LAÏCITÉ* GUARANTEES RESPECT FOR THE PRINCIPLE OF EQUALITY**

Laïcité, which implies the separation between the Churches and the State, guarantees equality among all citizens, regardless of their philosophical or religious convictions. Atheists, agnostics, believers of all creeds enjoy the same rights. The law cannot distinguish among citizens according to their convictions. No religious obligation can be imposed by law. Religions cannot intervene in the affairs of State, and the State must respect the independence of religions. Stigmatising a religion, imposing restrictions on the religious practices of one particular religion, would be an attack on the Republican principle of Equality, and would be discriminatory.

LAÏCITÉ CONTRIBUTES TO THE REPUBLICAN IDEAL OF FRATERNITY

As the Declaration of the Rights of Man and of the Citizen proclaims, “*Men are born and remain free and equal in rights.*” And yet they are not all alike. They are free to express their own particular convictions and what they adhere to. Adhering to the values of the Republic helps to bring citizens together and to accept their differences. *Laïcité* federates and reinforces the unity of the nation. It guards against all that divides or separates. It is a factor of national union and concord, and thereby contributes to the Republican ideal of Fraternity. *Laïcité* must be defended against all those who fight it or deny it. Those who do not respect its rules must be sanctioned. But a *laïcité* based on exclusion and prohibition would weaken itself by denying its founding principles of Liberty, Equality and Fraternity. After centuries of religious conflict, *Laïcité*, born of the 1789 Declaration of the rights of man and the citizen, of the legislation secularizing education at the end of the 19th century and the law of December 9, 1905, has enabled France today to strike a balance that is a precious asset. We must neither allow it to be brought into question, nor succumb to excessive zeal, even if the difficulties encountered in applying it in a new social and international context call for greater vigilance.

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Freedoms and Prohibitions in the Context of *Laïcité*
(Constitutional Secularism)
Edited Synopsis

a) *Laïcité* and the practical workings of its freedoms and prohibitions.

The last decades have seen the emergence, in a fragile social context, of new phenomena, such as the rise in communitarian demands and the misuse of secularism for the purpose of stigmatisation; **the *Observatoire de la Laïcité* has therefore decided to issue a succinct, precise reminder of what *Laïcité* means in terms of freedoms and prohibitions.**

b) Prohibitions and limits to individual freedoms in the framework of *laïcité*.

The principle of secularism [*laïcité*] means that the State and religious organisations are separate. There is therefore no state-run public worship. The State neither recognises, nor subsidises, nor salaries any form of worship. Exceptions and adjustments to the ban on funding are defined in the legislation and case-law; they concern in particular chaplaincies, which are paid for by the State.⁵⁴ No religion can impose its prescriptions on the Republic. No religious principle can be invoked for disobeying the law.

c) Prohibitions and limits in specific areas.

In the administration, public services, and firms [business enterprises] and associations with a public service mission, employees and agents are not allowed to manifest their religious, political or philosophical beliefs by signs, clothes or proselytism.

⁵⁴ In accordance with Article 2, paragraph 2 of the law of December 9, 1905.

Agents and employees represent in fact the nation as a whole, and must therefore adopt a neutral and impartial attitude, both towards the public and towards those they work with. Infringements are recorded, and can be sanctioned.

In private enterprises with no public service activity, manifestations of religious beliefs may be restricted or prohibited by the company's regulations, if this is justified by the nature of the work and on condition that the limitation is proportionate to the desired objective.⁵⁵

In the public area, in the sense of a common space (public streets and areas open to the public or used for public services), the Law of October 11, 2010 prohibits concealing one's face. The law is not based on the *laïcité* principle, but on public security considerations and the minimum demands of life in society.⁵⁶

d) Prohibitions and limits in public services.

Under the law of December 9, 1905, patients can practice their faith in public health institutions as long as they do not impede the functioning of the department, and subject to the requirements of public order, security, health and hygiene. The freedom to choose one's doctor does not apply in emergency situations (a doctor cannot be challenged [questioned formally] by a patient). Nor can freedom of choice run counter to the doctors' duty roster or the organisation of medical consultations required for ensuring the continuity of public service. In the case of a patient's refusal to accept treatment (a blood transfusion, for instance), while the patient's consent remains the basic principle, entailing therefore his or her right of refusal, the courts accept that for performing an act essential for survival doctors may disregard the rule.⁵⁷

⁵⁵ Article L 1121-1 of the *Code du travail*; Article L 1321-2-1 of the *Code du travail*; Directive 78/2000 CE of the *Conseil d'État*, November 27, 2000.

⁵⁶ Decision of the *Conseil constitutionnel*, n° 2010-613 DC, October 7, 2010.

⁵⁷ *Conseil d'État*, October 26, 2001. *Senanayaké*

For mass catering in public institutions, the responsible authority, necessarily neutral, must not take into account religious prescriptions concerning food, (halal or casher [kosher]), but can offer a choice of menus, with or without meat, for instance. However, in certain closed public institutions (for example prisons, boarding establishments or hospitals) or in the army, in application of Article 2, paragraph 2 of the Law of December 9, 1905,⁵⁸ the supervisory authority must take into account the fact that certain persons may not have the opportunity to practice their faith elsewhere. In such cases, the *laïcité* principle requires that steps be taken to enable such persons to comply with the food prescriptions of their religion, as long as they do not disturb the functioning of the public service and do not constitute a form of pressure on the members of the group who do not wish to follow suit.⁵⁹

In public sector primary and secondary schools it is forbidden for pupils to manifest ostensibly their religious affiliation by signs or clothes.⁶⁰ In such places, and at an age when the foundations of knowledge are acquired and critical faculties developed, the aim is to protect children from pressures aimed at making them wear such a sign, and to prevent conflicts between those wearing the sign and those who do not.

In public sector higher education establishments, although all faculty members enjoy freedom of expression, all staff members charged with a mission, including individual contractors, whether or not they are in contact with students, are subject to the rules applicable to all officials and public servants and to private sector

⁵⁸ Expenditures incurred by chaplaincies for ensuring that religions can be freely practiced in institutions such as primary and secondary schools, hospices, mental homes and prisons, may however be included in the corresponding budgets.

⁵⁹ *Conseil d'État*, February 10, 2016, n°385929, M.B.

⁶⁰ Law of March 15, 2004, regulating the application of the *laïcité* principle to the wearing of signs or clothes manifesting a religious affiliation in public sector primary and secondary schools.

employees providing a public service. However, such obligations, including that of neutrality, cannot be imposed on outside speakers invited to give a one-off lecture in a public sector establishment. Furthermore, teachers cannot refuse to give a class on the grounds, for instance, that one or several students are wearing religious signs.

e) Specific behaviours and proselytism in various areas.

Specific behaviours can arise, such as refusing to shake the hand of a person of the opposite sex, to be with such a person in certain collective areas, to work with such a person or to be examined medically by such a person. While there is no rule imposing a given form of politeness, as practices vary according to country, age and social status, forms of behaviour contrary to the equality between women and men and to human dignity are unacceptable, and can be considered to be discriminatory.

In public service areas (sports facilities, public swimming pools, etc.), requests for single-sex schedules can be refused, not on the basis of the *laïcité* principle, but on the grounds of gender equality and non-discrimination.⁶¹ Religious proselytism, consisting in attempting to convince someone to join a religion other than simply by clothes or religious signs,⁶² is forbidden in public services in the name of neutrality.

The same holds true in private firms when, through the means employed or the message conveyed, they disturb the peace or the normal functioning of the enterprise. The same applies when communitarian pressure forces individuals to engage in religious

⁶¹ However, Article 225-3 of the *Code pénal* lists several exceptions, justified by “the protection of victims of sexual violence; considerations related to respect for privacy and decency, and the promotion of gender equality or the interests of men and women; and the freedom of association and the organisation of sporting activities”.

⁶² *Conseil d’État*, November 27, 1996; n° 170207, 170208.

practices, or practices presented as such, which they had not personally expressed the desire to abide by.

f) Freedoms and rights guaranteed by *laïcité*.

Laïcité guarantees freedom of conscience for everyone; this includes the freedom to believe or not to believe, to practice a religion, to be atheist, agnostic or to be an adept of humanist philosophies, to change religion or to cease to have any religion. A distinction must be drawn, however, between the freedom to believe and the freedom to express one's beliefs. There can be no restriction to the freedom of belief. The freedom of thought from which derives the freedom of conscience includes the freedom to criticise any idea, opinion or belief, subject only to the legal limits of the freedom of expression. The freedom to express one's religious convictions, however, can be limited for the sake of public order, under conditions defined by the law. Freedom must however always be the rule, and the limitations the exception, in view of the constitutional principles enshrined in our Republic and France's international commitments, with which such legal restrictions must be compatible.

Laïcité guarantees the neutrality of the State, local authorities and public services, thereby ensuring their impartiality towards all citizens, regardless of their beliefs and convictions. The Republic neither recognises, nor salaries nor subsidises any form of worship. No religion or conviction can be either privileged or discriminated against. *Laïcité* is based on the separation between the Churches and the State, which means that the Churches cannot intervene in the functioning of the public authorities and that the public authorities do not manage the functioning of religious institutions.

Laïcité is an emancipating factor in two ways. On the one hand, the State is emancipated from any form of religious control. *Laïcité* in France is based on the same principle as democracy: in

neither case is the legitimacy of political authority founded on a supernatural basis, but on the sole sovereignty of the people [as] citizens.

[Democracy is an emancipation from the Hellenic concept of the impersonal force of nature, called Fate, which necessarily allotted what was allowed to the human condition. The Hebrews understood this experience as the Providence of Yahweh; the Christians as the experience of the Providence of God. Democracy's emancipating role "amounted to arrogating to oneself an authority that one did not actually have, namely, the authority and the freedom to try and determine one's life." ⁶³ Editor]

And secondly, *laïcité* emancipates religions from any form of State control. It guarantees believers and non-believers and agnostics the same rights, in particular the same right to the freedom to express their convictions.

Laïcité guarantees freedom of religion, but also freedom vis-à-vis religions: no one can be forced to respect religious dogma or prescriptions. With *laïcité*, the Republic guarantees the exercise of all civil rights, regardless of individual persuasions or beliefs.

g) Freedoms and rights guaranteed in various areas.

In the public area, in the sense of a common space (such as streets, public gardens, beaches, etc.), a person is free to wear religious signs, like any other sign expressing a person's convictions. For reasons of public security and in accordance with the minimum demands of life in society, it is however forbidden to conceal one's face.

It is important to distinguish clearly between what constitutes an objective disturbance of the peace, which sets a legal limit to

⁶³ Leslie Dewart (p. 115) *Hume's Challenge*.

religious practices, and a subjective perception which does not in itself warrant a limitation of the “fundamental freedoms of movement, of conscience and personal freedom.”⁶⁴ Dress codes, forms of physical appearance or behaviour, presented or perceived as expressions of religious affiliation, are liable to provoke reactions of hostility or suspicion.⁶⁵ Prohibition of all signs reflecting a person’s religious or other convictions in public areas (in the sense of the common space) would be an attack on the fundamental freedom to express one’s convictions (in the realm of religion, politics, trade unions, philosophy). Under the French Rule of Law, characterised by the principle of freedom, one does not forbid all that one disapproves of.

In a more general sense, in all areas, and with the exception of agents or employees carrying out a public service mission, people can dress as they wish, as long as they avoid forms of exhibition forbidden by law and abide by the rules concerning professional wear and the restrictions that may be imposed by requirements of public order, decency or hygiene, and by those justified by the nature of the task, and on condition that the limitation is proportional to the aim pursued.

h) Freedoms and rights in boarding establishments, hospital, armed forces, penitentiary structures and in the school system.

The application of the *laïcité* principle must take into account the fact that certain persons are unable to practise their religion

⁶⁴ Conseil d’État Order 402742, 402777, August 26, 2016: *Ligue des droits de l’homme et autres - association de défense des droits de l’homme collectif contre l’islamophobie en France*.

⁶⁵ Such forms of dress, of physical appearance or behaviour, may be presented as signs of a common affiliation, but also of marks of respect or modesty. Such signs concern both men and women, but reservations mainly target women’s clothes. Reservations or expressions of hostility mainly spring from the feeling that such manifestations are a symbolic aggression on the part of a religion seen as practising proselytism in the collective space. In the case of women’s clothes, such signs are seen as an infringement of women’s freedom, of their right to equality, even of their dignity, in violation of the principle of equality between men and women.

elsewhere, if they find themselves in boarding establishments, hospitals, the armed forces or in a penitentiary structure. That is why the Law of December 9, 1905 specifies that chaplaincies, paid for by the State, should be set up in such places.

The Republic guarantees that public education be governed by the *laïcité* principle. In public higher education institutions, which are areas of debate and freedom of expression, the students, who have freely chosen their course of study, are free to manifest their convictions, within the limits of the proper functioning of the establishment.⁶⁶ However students' dress should be adapted to the requirements in terms of hygiene or security of certain activities or courses (physical or sporting activities, practical work in chemistry, manipulation of dangerous instruments, etc.) During examinations, in order to prevent fraud, students may be asked not to conceal their ears, so that the absence of communication devices can be checked. Furthermore, contestation of lectures in the form of threats, pressure or attempts to challenge the lecturer, or to exclude some of the students, can lead to disciplinary action, in addition to possible legal sanctions. Students of the teacher training colleges (*Écoles supérieures du professorat et de l'éducation - ESPE*), who have passed the competitive examination for entering the teaching profession, are *ipso facto* trainee civil servants, and thereby subject to the obligation of neutrality - whether they be already teaching or still students. Lastly, while the departments organising examinations are invited to avoid, as far as possible, sessions on religious feast days, if it proves materially impossible to do so that does not constitute a violation of the religious freedom of the candidates.

⁶⁶ See the report of the Stasi Commission, 2003: "The situation of the Universities, although they belong to the public education system, is very different from that of the schools. University students are adults. Universities must be open to the world. There can therefore be no question of preventing students from expressing their religious, political or philosophical convictions. On the other hand, such manifestations must not lead to transgressing the institution's rules. It is not admissible for faculty members to be challenged owing to their sex or supposed religion, nor for teaching to be obstructed on principle."

i) Religious expression in the public area and relations with the churches.

Ceremonies, processions or other external collective manifestations of worship are possible as long as they do not disturb the peace. Mayors can however impose a route or a location for such religious demonstrations, for reasons of security or road traffic.

Religions are free, like any other social group, to express themselves on matters of society, ethics, politics or social affairs, as long as they do not preach discrimination, hatred or violence, or civil disobedience.

Any citizen or organisation can express, by lawful means, hostility towards a draft bill, or even a law duly voted, on the grounds that they consider the text to be contrary to their convictions. However, once the bill becomes law, they are bound to obey it and refrain from hindering its application. No one is however obliged to make use personally of a freedom granted by law. Expression of one's convictions cannot go so far as to question, in the name of principles considered to be "of a higher order," the legitimacy of decisions taken by democratic bodies.

While the *laïcité* principle distinguishes between the Churches and the Republic, it does not prevent the public authorities from consulting representatives of the religions and the main philosophical schools of thought.

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